

United States  
Circuit Court of Appeals  
For the Ninth Circuit.

SAM KLEINMAN,

Appellant,

vs.

PAUL W. SAMPSELL, Trustee in Bankruptcy, of the estate  
of Abraham Zemansky, David Zemansky and Sol Zemansky,  
doing business under the fictitious names and styles of Prov-  
ident Loan Association and State Loan Office, Bankrupts,  
Appellee.

Transcript of Record  
In Two Volumes  
VOLUME I  
Pages 1 to 391

Upon Appeal from the District Court of the United States  
for the Southern District of California,  
Central Division

FILED

NOV - 4 1942



United States  
Circuit Court of Appeals  
For the Ninth Circuit.

---

SAM KLEINMAN,

Appellant,

vs.

PAUL W. SAMPSELL, Trustee in Bankruptcy, of the estate  
of Abraham Zemansky, David Zemansky and Sol Zemansky,  
doing business under the fictitious names and styles of Provident Loan Association and State Loan Office, Bankrupts,

Appellee.

---

Transcript of Record  
In Two Volumes  
VOLUME I  
Pages 1 to 391

---

Upon Appeal from the District Court of the United States  
for the Southern District of California,  
Central Division





# INDEX

---

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	Page
Adjudication of Bankruptcy.....	6
Appeal:	
Designation by Appellant of Contents of Record on .....	89
Notice of .....	83
Order Extending Time to Docket.....	579
Statement of Points on (CCA).....	581
Certificate of Clerk to Transcript of Record...	93
Certificate on Petition for Review by Sam Kleinman, Referee's .....	44
Conclusions of Law.....	35
Designation of Record on Appeal.....	89
Designation, Supplemental, of Record on Ap- peal .....	92
Findings of Fact and Conclusions of Law.....	25
Letter of Attorney.....	14
Names and Addresses of Attorneys.....	1
Notice of Appeal.....	83

Index	Page
Notice of Entry of Order.....	82
Objections to Claim of Sam Kleinman, Objections to Right of Security Thereunder and Set Offs to Said Claim.....	15
Order and Decree.....	36
Order Extending Time to Docket Appeal.....	579
Order of Judge on Petition for Review of Referee's Order .....	81
Petition for Arrangements Under Chapter Eleven of the Federal Bankruptcy Act....	2
Petition for Review of Referee's Order.....	37
Petition of Sam Kleinman for Extension of Time to Docket Appeal.....	578
Proof of Claim of Sam Kleinman.....	7
Referee's Certificate on Petition for Review by Sam Kleinman.....	44
Reporter's Transcript of Excerpts from Proceedings on Argument on Petition of Sam Kleinman for Review of Referee's Order of January 17, 1941.....	557
Reporter's Transcript of Excerpts from Proceedings on Hearing Argument on Certificate on Petition of Sam Kleinman for Review of Referee's Order of January 17, 1941.....	547

<b>Index</b>	<b>Page</b>
Statement of Points on Which Appellant Intends to Rely (CCA).....	581
Statement of Points Upon Which Appellant Intends to Rely on Appeal, Pursuant to Rule 75D, Federal Rules of Civil Procedure	85
Supplemental Designation by Appellant of Contents of Record on Appeal.....	92
Defendant's Exhibits:	
4—Agreement Dated 24th Day of February 1939, Between Sol Zemansky, Dave Zemansky and Abe Zemansky and the Provident Loan Association and the State Loan Office and Sam Kleinman.....	110
5—Agreement Dated 2nd Day of March 1939 .....	137
6—Agreement Dated 22nd Day of March 1939 .....	154
11—Two Tabs Dated July 5 and July 6 for \$50 Each.....	428
Plaintiff's Exhibits:	
1—Form of Note Issued by State Loan Office, Blank.....	255
3—List of Pledge Tickets and Amounts .....	328

Index	Page
Plaintiff's Exhibits (Continued):	
5—Account of Pledges Redeemed and Paid to "S. Kleinman", Sam Kleinman, Los Angeles, Calif....	371
7—Inventory, March 20/39, Pledge Tickets .....	380
8—List of Pledge Tickets and Amounts .....	463
Witnesses for Defendant:	
Grainger, Kyle Z.	
—direct .....	542
Holdrege, R. D.	
—direct .....	97
Kleinman, Sam	
—direct .....	393
Kravitz, Leo	
—direct .....	275
—cross .....	302
—redirect .....	329
Sego, Robert	
—direct .....	339
—cross .....	343
—redirect .....	345
Zemansky, Abraham	
—direct .....	362
—cross .....	369
—redirect .....	386

## Index

## Page

## Witnesses for Defendant (Continued):

## Zemansky, Dave

—direct .....	345
—cross .....	351
—redirect .....	359
—recross .....	361
—recalled, direct .....	389-499
—recalled, cross .....	390-506

## Zemansky, Sol

—direct .....	99
—cross .....	233
—redirect .....	261-270
—recross .....	268-271

## Witnesses for Plaintiff:

## Dienstag, Edward

—direct .....	513
—cross .....	537

## Kleinman, Sam

—direct .....	440
—cross .....	485
—redirect .....	497

## Pacht, Isaac

—direct .....	510
---------------	-----

## Wolver, Eugene L.

—direct .....	538
---------------	-----

## Yates, Ralph J.

—direct .....	538
—cross .....	541





NAMES AND ADDRESSES OF ATTORNEYS:

For Appellant:

EDWARD DIENSTAG,  
THEODORE A. HORN,  
LOUIS MILLER,  
110 Sutter Street  
San Francisco, Calif.

For Appellee:

FRANK C. WELLER,  
817 Board of Trade Building  
111 West 7th  
Los Angeles, Calif.

MURRAY M. CHOTINER  
508 James Oviatt Building  
617 S. Olive  
Los Angeles, Calif. [1\*]

---

\*Page numbering appearing at foot of page of original certified Transcript of Record.

In the United States District Court in and for  
the Southern District of California  
Central Division

No. 34490-H Bkey.

In the Matter of

ABRAHAM ZEMANSKY, DAVID ZEMANSKY  
and SOLOMON ZEMANSKY, doing business  
under the fictitious names and styles of PROV-  
IDENT LOAN ASSOCIATION and STATE  
LOAN OFFICE,

Debtor.

PETITION FOR ARRANGEMENTS UNDER  
CHAPTER ELEVEN OF THE FEDERAL  
BANKRUPTCY ACT

To: The Honorable Judges of the District Court of  
the Southern District of California:

The petition of Abraham Zemansky and David Zemansky and Solomon Zemansky, commonly referred to as Zemansky Bros., transacting business as co-partners under the fictitious name and style of Provident Loan Association, and also transacting business under the fictitious name and style of State Loan Office, respectfully shows:

I.

That petitioners are residents of the County of Los Angeles and State of California, in said District, and for more than one (1) year last past have carried on their business in said City of Los An-



geles, County of Los Angeles and State of California in said District, as follows, to-wit:

The business of the Provident Loan Association at 706 So. Hill Street, Los Angeles City and the business of State Loan Office at 558 So. Main Street, Los Angeles.

## II.

Petitioners allege that they are insolvent and are unable to pay their debts as they mature. That no petition in bankruptcy has been filed against or by them. That attached hereto and made a part of this petition is a statement of the affairs [2] of petitioners. That petitioners owe debts which they are unable to pay in the approximate amount of \$1,250,000.00. That they have assets and properties in the approximate amount of \$500,000.00. That there are no executory contracts except two leases; one in favor of the Cutts Estate covering petitioners' principal place of business, at 706 South Hill Street, Los Angeles, Calif., expires in March of 1945, carrying a rental of \$600.00 per month at the present time, and second, a lease expiring March 1, 1940, covering the premises occupied by petitioners at 558 So. Main Street, Los Angeles, Calif., carrying a rental of \$400.00 per month.

## III.

That due to the large number of creditors and the extent and nature of the assets of petitioners, which consist largely of jewelry and notes, the preparation of a complete statement of affairs, and the

preparation of a statement of all the debts and the addresses of the creditors and a detail of all of the assets entails a vast amount of detail work.

That it is deemed desirable by petitioners that the within petition be filed forthwith. That an attachment has been levied upon some of the properties belonging to petitioners and petitioners show that they propose to file a full statement of debts and assets and statement of affairs as required by the Act, within a period of three (3) days from the date of the filing of this petition, all of which will be filed under oath as required by the provisions of said Act.

Wherefore your petitioners pray:

First—that they be allowed by this Honorable Court a period of three days from and after the date of the filing of this petition within which to file a full and true statement of all debts, and the names and places of residence of their credi- [3] tors and an accurate inventory of all property of petitioners and a statement of the affairs of said petitioners as required by the provisions of said Act, and

Second—your petitioners pray that proceedings may be had upon this petition in accordance with

the provisions of Chapter 11 of the Act of Congress relating to bankruptcy.

ABRAHAM ZEMANSKY  
DAVID ZEMANSKY  
SOLOMON ZEMANSKY  
BINFORD & BINFORD  
By L. B. BINFORD

State of California  
County of Los Angeles—ss.

We, Abraham Zemansky, David Zemansky and Solomon Zemansky, the petitioners named in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of our knowledge, information and belief.

ABRAHAM ZEMANSKY  
DAVID ZEMANSKY  
SOLOMON ZEMANSKY

Subscribed and sworn to before me this 10th day of July, 1939.

[Seal]

V. I. MacMAHON

Notary Public in and for said  
County and State

The petition may be filed and three days time is allowed debtor within which to file schedules and list of creditors.

WM. P. JAMES  
Dist. Judge.

[Endorsed]: Filed Jul. 10, 1939. [4]

[Title of District Court and Cause.]

### ADJUDICATION OF BANKRUPTCY

The above named debtors having heretofore filed a Petition for Arrangements under Section 322 of Chapter Eleven of the Federal Bankruptcy Act, and having failed to offer any arrangements or plan of settlement with their creditors, and due notice to the debtor, the creditors and other persons as directed by the Court having been duly given and hearing held pursuant thereto on the 31st day of October, 1939, at the hour of two o'clock P. M., and it appearing that the debtors should be adjudged bankrupt and bankruptcy proceeded with,

Now, Therefore, At Los Angeles in said District on this 31st day of October, 1939, it is hereby Ordered and Adjudged that Solomon Zemansky, Abraham Zemansky and David Zemansky, sometimes transacting business under the fictitious name and style of Provident Loan Association and also sometimes transacting business under the fictitious name and style of State Loan Office, and Zemansky Brothers, a co-partnership composed of Solomon Zemansky, Abraham Zemansky and David Zemansky, be and they hereby are jointly adjudged bankrupts within the true intent and meaning of the Acts of Congress relating to bankruptcy.

Done at Los Angeles in said District on this said 31st day of October, 1939.

ERNEST R. UTLEY

Referee

[Endorsed] : Filed Jul. 17, 1942. [5]



[Title of District Court and Cause.]

## PROOF OF CLAIM OF SAM KLEINMAN

At the City and County of San Francisco, in the Northern District of California, on the 14 day of February, 1940, A. D., came Sam Kleinman, of the City of Los Angeles, in the County of Los Angeles, in the above-entitled District of California, and made oath and says that Abraham Zemansky, Solomon Zemansky and David Zemansky, doing business under the fictitious firm names and styles of Provident Loan Association, State Loan Office and Zemansky Brothers, a co-partnership, the persons who heretofore filed a petition for composition and against whom an adjudication of bankruptcy has been filed, were at and before the filing of said petition, and still are, justly and truly indebted to said deponent in the sum of One Hundred Twenty-seven Thousand, Five Hundred One and  $\frac{61}{100}$  (\$127,501.61) Dollars, composed as follows:

One Hundred Twenty-six Thousand, Four Hundred One and  $\frac{61}{100}$  (\$126,401.61) Dollars, secured, as hereinafter provided;

Three Hundred Seventy (\$370.00) Dollars, unsecured;

Seven Hundred Fifty (\$750.00) Dollars, unsecured, for which a priority is claimed, as hereinafter set forth. [10]

First: One Hundred Twenty-six Thousand, Four Hundred One and  $\frac{61}{100}$  (\$126,401.61) Dollars; that the consideration for said debt is as follows: Lawful

money of the United States of America, loaned to the above-named bankrupts by your deponent, at the times and in the amounts hereafter shown, and evidenced by promissory notes aggregating One Hundred Eighty Two Thousand, Four Hundred Eighty (\$182,480.00) Dollars, upon which no judgments have been rendered, together with the interest allowed by said notes, computed from the dates of said notes, in the amounts hereinafter shown, and together with costs and reasonable attorney's fees, provided for in said notes and contracts, hereinafter described, and which reasonable attorney's fees your deponent estimates to be in the amount hereinafter set forth; that contemporaneously with the delivery and negotiation of said promissory notes, in the manner, amounts and on the dates hereinafter set forth, the aforesaid bankrupts entered into and executed contracts under and by virtue of the terms, conditions, covenants and agreements of which, the payment of the aforesaid promissory notes were secured by said debtors; that copies of said promissory notes and said contracts are hereto attached, and by reference thereto are made a part hereof, except that said agreement of February 24th, 1939 pertained to and contained copies of twenty (20) identical notes, of which a copy is thereto annexed, and said agreement of March 2nd, 1939, contained and pertained to five (5) identical promissory notes of Five Thousand (\$5,000.00) Dollars each, of which a copy is thereto annexed; that the dates of said respective promis-

sory notes and contracts and the amount of the obligation and the amount secured by and the due dates of said notes are as follows:

Date of Notes and Contracts 1939		Amount	Due 1939	
February	24	\$100,000.00	February	29
[11]				
March	2	\$ 25,920.00	Demand	
	22	2,510.00	March	27
	28	2,000.00	April	2
	31	2,200.00	April	4
April	5	2,000.00	April	10
	3	2,500.00	April	8
	8	2,000.00	April	13
	11	2,200.00	April	16
	13	2,100.00	April	18
	15	2,200.00	April	20
	18	2,500.00	April	23
	21	2,000.00	April	26
	24	1,500.00	April	29
	28	2,500.00	May	3
May	2	1,200.00	May	7
	9	3,700.00	May	14
	13	2,000.00	May	18
	25	3,400.00	May	30
June	2	3,750.00	June	7
	7	3,400.00	June	12
	23	3,900.00	June	28
	28	4,600.00	July	3
July	5	2,400.00	July	10
		<hr/>		
Total		\$182,480.00		
		<hr/>		

That as provided for in said notes and contracts, notes bear interest from the date and in the percentage therein respectively provided; that the amount of interest upon said notes to the date hereof is in

the sum of Eight Thousand Fifty One and 61/100 (\$8,051.61) Dollars, computed as follows:

Interest due to July 11, 1939, the date of the filing by the bankrupts of their petition for reorganization.....	[12] \$1,490.42
Interest due from July 11, 1939, to November 21, 1939, the date of adjudication of bankruptcy .....	4,002.93
Interest due from November 21, 1939, to February 14, 1940, the date of execution of this proof of claim.....	2,558.26
Total.....	<hr/> \$8,051.61

That your deponent is informed and believes, and on such information and belief alleges, that a further period of time will elapse before he realizes upon his security, hereinbefore set forth; that interest will be due at that time in an amount unknown to your deponent, but your deponent asks that the said additional interest be computed at said time and included in this claim.

That it is provided in said respective notes and contracts that in the event it be necessary for your deponent to retain and hire attorneys for the collection of said obligation, that he should be entitled to costs and reasonable attorney's fees; that your deponent has been compelled to obtain legal services for the collection of said notes and contracts; that your deponent is informed and believes, and upon information and belief alleges, that the sum of Ten Thousand (\$10,000.00) Dollars is a reasonable fee to be paid for the rendering of said attorney's services, heretofore and hereafter to be necessarily re-



quired herein; that deponent asks leave to add the amount of costs when same are determined. That no part of said debt has been paid, except on the following dates and in the following amounts: [13]

March	2, 1939	\$25,920.00
	22, 1939	2,510.00
	28, 1939	2,000.00
	30, 1939	2,200.00
April	4, 1939	4,500.00
	8, 1939	2,000.00
	11, 1939	2,200.00
	13, 1939	2,100.00
	15, 1939	2,200.00
	18, 1939	2,500.00
	21, 1939	2,000.00
	24, 1939	1,500.00
	28, 1939	2,500.00
May	9, 1939	3,700.00
	13, 1939	1,000.00
	25, 1939	3,400.00
June	7, 1939	3,400.00
	23, 1939	3,900.00
	28, 1939	4,600.00
		<hr/>
Total		\$74,130.00

That there are no set-offs or counter-claims to the same; and that the only security held by this deponent for said debts are the said notes and contracts and the pledge tickets, properties and rights therein granted or secured by the terms, covenants and conditions in said contracts, hereinbefore more fully described which, as hereinbefore provided, are annexed hereto.

That the value of said security has not been determined; that when a determination of the same is made and when the said security is realized and

paid to your deponent, pursuant to said notes and contracts, that your deponent receive upon any balance of his claim that may be unsecured, if any there be, a dividend, and have the same rights as an unsecured creditor in regard thereto. [14]

That the originals of the aforesaid notes and contracts are not attached hereto, for the purpose of safety and safe-keeping, but that the same are available and will be exhibited at all proper times and to all proper persons.

That nothing hereinbefore is intended to, nor shall the same be deemed to be a waiver of any security or rights created by, or to which the deponent is entitled under, the terms and conditions of the notes and contracted attached hereto.

Second: Three Hundred Fifty (\$350.00) Dollars; that the consideration for said debt is money loaned to the above-named bankrupts by deponent and evidenced by an IOU attached hereto and made a part hereof by this reference thereto; that no judgment has been rendered thereon, and that no part of said debt has been paid, and that there are no set-offs or counter-claims to the same, and that deponent has not, nor has any person by his order or to his knowledge or belief, for his use had or received any manner of security for said debt whatsoever.

Third: Seven Hundred Fifty (\$750.00) Dollars; that the consideration for said debt is services rendered by deponent as an employee of the above-

named bankrupts, for which services deponent earned wages and commissions in an amount upon which he is informed and believes, and upon information and belief alleges, is in the above-named sum of Seven Hundred Fifty (\$750.00) Dollars; that said wages and commissions were earned and the services therefor performed by deponent, as a salesman and clerk employed by said bankrupts within three (3) months prior to the filing of the petition by the aforesaid bankrupts, and that a preference and priority as a labor claim is asserted and demanded therefor, over and prior to the payment of other claims except of the same class, as provided for and set forth in the Bankruptcy Act; that no judgment has [15] been rendered thereon, and that no part of said debt has been paid, and that there are no set-offs or counter-claims to the same, and that deponent has not, nor has any person by his order or to his knowledge or belief, for his use had or received any manner of security for said debt whatsoever.

SAM KLEINMAN

Creditor.

Subscribed and sworn to before me this 15th day of February, A. D., 1940.

[Seal]

MARY A. LAPACHET

Notary Public in and for said  
County and State.

My Commission Expires July 3, 1941. [16]

## LETTER OF ATTORNEY

To Eugene L. Wolver, Theodore A. Horn and  
Edward B. Dienstag:

I, Sam Kleinman, the claimant mentioned in the foregoing claim, do hereby authorize you, or any one of you, to attend the meeting or meetings of creditors of the bankrupt aforesaid at a court of bankruptcy, wherever advertised or directed to be holden, on the day and at the hour appointed and notified by said Court in said matter, or at such other place and time as may be appointed by the Court for holding such meeting or meetings, or at which such meeting or meetings, or any adjournment or adjournments thereof, may be held, and then and there from time to time, and as often as there may be occasion, for said claimant and in his name to vote for or against any proposal or resolution that may be then submitted under the Acts of Congress relating to Bankruptcy; and in the choice of trustee or trustees of the estate of the said Bankrupt, and for said claimants to assent to such appointment of trustees; and with like powers to attend and vote at any other meeting or meetings of creditors, or sitting or sittings of the Court, which may be held therein for any of the purposes aforesaid; also to accept any composition proposed by said Bankrupt in satisfaction of his debts, and to receive payment of dividends and of money due said claimants under any composition, and for any other



purpose in said claimants' interest whatsoever, with full power of substitution.

In Witness Whereof, the undersigned has hereunto set his hand and seal for and on behalf of said claimants the 14 day of February, 1940.

SAM KLEINMAN

Subscribed and sworn to before me this 15th day of February, 1940.

[Seal]

MARY A. LAPACHET

Notary Public in and for the  
County of San Francisco,  
State of California.

My Commission Expires July 3, 1941. [17]

---

[Title of District Court and Cause.]

OBJECTIONS TO CLAIM OF SAM KLEINMAN, OBJECTIONS TO RIGHT OF SECURITY THEREUNDER AND SET-OFFS TO SAID CLAIM.

Comes now Paul W. Sampsell, the duly appointed, qualified and acting Trustee in the above entitled estate, and files herewith his objections to the claim of Sam Kleinman, objections to right of security thereunder, and set-off to said claim filed herein in the amount of \$127,501.61, of which \$750.00 is claimed as a preferred labor claim, and the balance

as a secured claim, and as and for his grounds of objection alleges:

I.

That no part of the said claim is entitled to priority of payment as a labor claim.

II.

That the said claim is unsecured and the said claimant does not have or hold and is not entitled to any security in connection with the said claim, and is not entitled to any claim, lien, charge or security upon any property or assets of the bankrupt, or of third persons, as security for the said claim by virtue of any alleged transfer, assignment, pledge or hypothecation of any property or assets of the bankrupt or third persons for the reason that all of the said property and assets have at all times remained in the possession and under the control of the [248] bankrupt. Your Trustee further alleges that there are no valid, legal or binding transfers or assignments to the said claimant of any property or assets of the bankrupt, accounts receivable or pledge obligations receivable, and alleges that the said property has at all times remained under the exclusive possession and control of the bankrupt.

Your Trustee further alleges that any act or attempt by the bankrupt to rehypothecate, assign or pledge any contracts held by it as pledgee in its business as pawnbroker is void and illegal and contrary to the provisions of the laws of the State of

California, and in connection with any claim for security made by the said claimant, your Trustee alleges that the bankrupt had possession and control of the said property claimed by the claimant to be held as security, and your Trustee so has possession and control thereof, and that the Referee has sole and exclusive jurisdiction herein to determine the nature, extent and amount of the claim of the said claimant as filed herein, and of the set-off thereto, and of the claim of security therefore, and your Trustee further alleges that the said claimant should be required to show what right, title and interest, if any, either as to ownership or as security which claimant has, claims or maintains upon and in connection with the said property, assets, effects, pledges and pledge contracts held and in the possession of your Trustee herein, and your Trustee alleges that the said claimant should be required to show herein why the same should not be considered as assets of this bankrupt estate and free and clear of any claim of ownership or of security in and to claimant. [249]

## V.

Your Trustee alleges that on the 24th day of February, 1939, the bankrupt executed an agreement with Sam Kleinman, the claimant, by the terms of which the parties recited that they were desirous of having the then account owing to the said Kleinman, by the bankrupt secured by way of pledge and that the bankrupt was desirous of pledging pawn tickets held by the bankrupt as pawn broker pledgee



to secure the said twenty notes, and by the terms of the said agreement, in addition to making and delivering of the said notes, the bankrupt agreed to transfer and deposit by way of pledge with Sam Kleinman as collateral security for the payment of said notes certain pledge agreements and pawn tickets as set forth in Exhibit "A" attached to the said agreement, and pursuant to the said agreement the said bankrupt executed and delivered to the claimant twenty \$5,000.00 notes evidencing the account of the claimant at that time in the amount of \$100,000.00. That said pledge agreement, pledged property and pawn tickets, however, at all times remained in the possession and under the control of the bankrupt, and by said agreement second party attempted to constitute the bankrupt as its agent for the purpose of collecting money under the said pledges to be held by the bankrupt for the [255] purpose of applying the same upon demand of the said Sam Kleinman as payment under the said promissory notes. Said agreement further provided that the bankrupt was to retain in its possession the article pledged and pawned.

That subsequent thereto and on the dates as set forth hereinafter, the bankrupt and the said Sam Kleinman entered into a series of agreements bearing dates as set forth hereinafter, all the said agreements being in the same form and terms, which said agreements were intended to be evidence of a por-



tion of the said \$100,000.00 obligation (Twenty \$5,000.00 notes) to wit:

1939	March	2.....	25,920.00	
	"	22.....	2,510.00	
	"	28.....	2,000.00	
	"	31.....	2,200.00	
	April	5.....	2,000.00	
	"	3.....	2,500.00	
	"	8.....	2,000.00	
	"	11.....	2,200.00	
	"	13.....	2,100.00	
	"	15.....	2,200.00	
	"	18.....	2,500.00	
	"	21.....	2,000.00	
	"	24.....	1,500.00	
	"	28.....	2,500.00	
	May	9.....	3,700.00	
	"	13.....	1,000.00	
	"	25.....	3,400.00	
	June	2.....	3,750.00	
	"	23.....	3,900.00	
	"	28.....	4,600.00	\$74,130.00

---

The above amount of \$74,130.00, together with the additional amounts as set forth hereinafter in Paragraph VI, makes the total of the claim of Sam Kleinman as filed herein in the amount of \$127,-501.61.

By the terms of said agreements the bankrupt agreed to transfer and deposit by way of pledge with Sam Kleinman as collateral security for the same new promissory notes, the certain pledge agreements, pledged property and pawn tickets identified and numbered in accordance with an Exhibit "A" attached to each said contract, which said pledge agreements and pledged property [256]

and pawn tickets were in the possession of the bankrupt, and by the terms of which agreement the bankrupt attempted to appoint and constitute the said Sam Kleinman or his attorney as its agent to sell the whole or any part of the said pawn tickets at the designation of the said Sam Kleinman, proceeds to be applied upon the said promissory note, in the said agreements referred to. By the said agreement the said Sam Kleinman attempted to appoint the bankrupt as his agent to collect the sums of money owing upon the said pawn tickets and pledge agreements, the said bankrupt to hold the same in trust for the purpose of applying such money so collected to the payment of the said promissory notes.

Contemporaneously with each of the said agreements last above referred to, the said Sam Kleinman executed a "Receipt of Pledge" whereby he set forth that he received the said pledge agreements, pledged property and pawn tickets as referred to in each of the said separate contracts. Your Trustee alleges however, that the said receipt was fictitious, the said pledge agreements, pawn tickets and pledged property remaining at all times in the possession of the bankrupt and contemporaneously therewith a further "Receipt" was executed by the bankrupts whereby the bankrupts acknowledged that they had received from the said Sam Kleinman "temporary custody" of the said pledge agreements involved in each separate contract. Your Trustee alleges that the said receipt was fictitious in that there was no change of possession at any

time of the said pledge agreements or pledge property, and that the said pledges, pledged property and pawn tickets thereunder at all times remained under the sole and exclusive possession of the said bankrupt. Your Trustee alleges that when the pledges were redeemed by the customers of the bankrupt or funds were received thereon, that the said funds were used by the bankrupts in their business as pawnbroker. Your Trustee further alleges that the said funds were not placed in any trust account but went into and became a [257] part of the general funds of the bankrupt. Your Trustee alleges that the pledgors and customers of the bankrupt were never notified and had no knowledge of the alleged assignment or transactions with the said Sam Kleinman as set forth herein, and the said Sam Kleinman had no right to make collections and did not make collections upon the said pledge accounts, and the said Sam Kleinman made no objection to the deposit of said funds in the general account of the bankrupt or to the use thereof by the bankrupt. Your Trustee alleges that while there were certain alleged agreements for assignment and transfer, there was in fact, never at any time a transfer of the said pawn tickets or pledges actually made.

## VI.

Your Trustee alleges that at all times as set forth herein and particularly for the period of four months prior to the filing of the within proceedings, the bankrupt was insolvent in this, that the reason-



able and fair value of the assets of the bankrupt was less than the amount of its obligations, and that the said Sam Kleinman knew and had reasonable cause to believe that the said bankrupt was insolvent, and with intent to prefer the said Sam Kleinman over the other creditors of the bankrupt, the said bankrupt, upon receiving payments upon and pay-off of the pledge contracts alleged to have been held by the said Sam Kleinman as security, subsequently, and not contemporaneously therewith, attempted to pledge and assigned to the said Sam Kleinman other and further pawn tickets and pledge contracts with the attempt to secure the then unsecured account owing to the said Sam Kleinman. That the said transfer and assignments so made (if the Referee should determine that the said obligations of the said Sam Kleinman were secured and the pawn tickets and pledge agreements to constitute security) in those instances and upon those dates as set forth hereinabove, where the same would fall within the period of four [258] months prior to the date of this proceeding, constitute preferences and an attempt upon behalf of the bankrupt to give to the said Sam Kleinman further and additional payment and security upon his obligation, and the said attempted transfer and assignment do so prefer the said Sam Kleinman over other creditors, and the said transactions therefore were and constitute preferences within the contemplation of the Acts of Congress relating to Bankruptcy. Your Trustee alleges the said Sam Kleinman knew and had reason-

able cause to believe that he was so preferred over the other creditors herein.

## VII.

That the claim of the bankrupt is made up of the above (\$74,130.00) and the following:

	\$ 74,130.00
Balance of said \$5,000.00 notes not exchanged	25,870.00
Claimant alleges that subsequent to Feb. 24, 1939, he advanced the amount of #350.00 evidenced by I. O. U. to the bankrupt, and was entitled to salary in the amount of \$750.00, or a total of.....	1,100.00
Claimant maintains that he advanced further funds to the bankrupt subsequent to Feb. 24, 1939, in the amount of.....	5,950.00
which said advance your Trustee alleges was not made, and that there is no valid claim therefore.	
Claimant claims interest from Feb. 24, 1939, to the date of the filing of the within proceeding in the amount of.....	10,451.61
Claimant claims the amount of.....	10,000.00
attorney fees. Your Trustee alleges that there was no consideration therefor and that the same is not a proper claim or charge herein.	

---

Total amount of claim as asserted by claimant..\$127,501.61

## VIII.

Your Trustee therefore alleges that the said claim of the claimant should be held and determined herein as unsecured.

Your Trustee alleges that your Trustee should be entitled to set-offs against the said claim of the claimant herein in the following amounts to wit:

Attorneys fees claimed, which your Trustee alleges are not allowable and that there is no consideration therefor.....\$ 10,000.00

Your Trustee alleges that there were no advances or further consideration given by the claimant to the bankrupt subsequent to Feb. 24, 1939, and that the said alleged additional advance as claimed in the claim should be disallowed in the amount of..... 5,950.00

Wherefore, your Trustee prays that his objections be heard herein; that the claim of the claimant herein be held and determined to be unsecured, and that the claimant have no right, title, interest, lien or security in and to the pledges and pledge contracts and pledged property claimed by it, and that the same be determined to be the property and asset of the bankrupt estate; \* \* \* . Your Trustee further prays that in the event the Referee determines that the assignment, transfer or hypothecation of the pawn tickets and pledge agreements were valid and constituted security, that the claims of preference as asserted by the Trustee in Paragraph V hereinabove, be determined by the Referee.

PAUL W. SAMPSELL,

Trustee

F. C. WELLER and

HUBERT F. LAUGHARN

MURRAY M. CHOTINER

By HUBERT F. LAUGHARN

Attorneys for Trustees [260]

(Duly Verified.)

[Endorsed]: Filed May 23, 1940. [261]



[Title of District Court and Cause.]

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

The objections of the trustee-in-bankruptcy came on regularly for hearing before the Honorable Benno M. Brink, referee-in-bankruptcy, after successive continuances, on the 21st day of August, 1940 at 10:00 o'clock A.M., Murray M. Chotiner, Frank C. Weller and Hubert F. Laugharn, appearing as attorneys for Paul W. Sampsell, trustee of the within bankrupts, Edward Dienstag, Eugene L. Wolver, Louis Miller and Theodore A. Horn, appearing as attorneys for Sam Kleinman.

The Court, after hearing the evidence and argument of counsel and being fully advised in the premises, and the matter having been submitted for determination, make findings of fact and conclusions of law as follows:

## FINDINGS OF FACT

That the bankrupts for some time past, and at the time of the filing of the above entitled bankruptcy proceedings, were engaged in the business of pawn brokers. The Bankrupts operated a place of business known as the "State Loan Office," located at 558 South Main Street, and a place of business known as the "Provident Loan Association," located at 706 South Hill Street, Los Angeles.

That in the operation of the pawnbroking business the following procedure was used whenever a loan was made to a customer: [262] a pawn ticket

which contained a general description of the merchandise was given to the customer. The stub contained a detailed description and was kept as a part of the records of the bankrupts. The jewelry which had been pledged by the customer was placed in an envelope and kept in a drawer in the vault.

The above entitled bankruptcy proceedings were commenced July 10, 1939. The bankrupts, as co-partners and as individuals, at that time and for at least a year prior thereto, were insolvent.

At all times before and since Sam Kleinman became a creditor of the bankrupts there were other creditors of the bankrupts in existence and were in existence at the time of the commencement of the bankruptcy proceedings.

Sam Kleinman first started loaning money to the bankrupts in 1927. The rate of interest was twelve (12) per cent and security was not given to him. The bankrupts repaid the money to Sam Kleinman in 1929. In 1933 Sam Kleinman resumed loaning money to the bankrupts. The rate of interest was twelve (12) per cent and security was not given to him. The creditor became associated with the Provident Loan Association in 1935 for the purpose of selling jewelry received by the bankrupts by virtue of foreclosure of pledges. The money received from the sale of the jewelry went into the operation of the bankrupts' business. Sam Kleinman received a salary and a commission for his services. When he was not busy disposing of jewelry he assisted as a loan clerk at the Provident Loan Association. A loan clerk is one who waits on customers and makes loans



to people who wish to pledge jewelry or other property. During the year prior to the bankruptcy proceedings, the amount of jewelry delivered to the claimant by the bankrupts for re-sale was diminished considerably by the bankrupts for the reason that there was not as much jewelry on hand for sale. On January 1, 1939, Sam Kleinman volunteered to take a reduction in salary, knowing there was not enough work for him to do, and because he was having trouble [263] with his health and because he desired a vacation on account of such illness. During his employment at the Provident Loan Association he had access to and was familiar with the cash drawer where the money was kept for the purpose of making loans to customers. He knew that in 1936 and 1937 there was sufficient funds to make loans. After that time he knew there was not sufficient money to make all loans requested by customers. On many occasions Sam Kleinman told the bankrupts and their employees there was not enough money to make loans and asked them to obtain the necessary funds. On many of these occasions the bankrupts did not provide the necessary funds. He also knew many large loans were refused because the bankrupts were short of capital, and that many loans to customers were not made because of the lack of funds.

In the early part of January, 1939, Sam Kleinman demanded security for his loan. His son-in-law, Edward Dienstag, an attorney, negotiated with the bankrupts for security. The bankrupts first informed him that they were unable to give the

pledges as security as that was not permitted under the law. Mr. Dienstag claimed he had a plan whereby the security could be given.

On or about February 24, 1939, the bankrupts were indebted to Sam Kleinman in the sum of \$99,379.00. The creditor advanced an additional sum of \$621.00 to make the indebtedness an even \$100,000.00.

That on February 24, 1939, and for some time prior thereto and continuously thereafter, Sam Kleinman had reasonable cause to believe and did know that the bankrupts as co-partners and as individuals were insolvent. On February 24, 1939, the bankrupts and Sam Kleinman executed an agreement by the terms of which the parties recited they were desirous of having the account owing to Sam Kleinman secured by way of pledge and that the bankrupts were desirous of pledging pawn tickets held by the bankrupts as a pawnbroker to secure the said indebtedness. The terms of said agree-[264] ment, in addition to making and delivering notes, provided that the bankrupts agreed to transfer and deposit by way of pledge with Sam Kleinman as collateral security for the payment of said notes, certain pledge agreements and pawn tickets. Pursuant to said agreement the bankrupts executed and delivered to Sam Kleinman twenty (20) \$5,000.00 notes evidencing the account at that time in the amount of \$100,000.00. The Pledge agreements, pledged property and pawn tickets, however, at all times remained in the possession and under the con-

trol of the bankrupts. Sam Kleinman by said agreement attempted to constitute the bankrupts as his agent for the purpose of collecting money under the said pledges. The agreement further provided that the bankrupts were to retain in their possession the articles pledged and pawned in respect to and by virtue of the pawn tickets and to deliver them to the owner thereof, or assignees of said owners, only upon redemptions of said pawn tickets by the payment of the same as provided by Section 3 of the Statutes of California, 1935, page 1613; and after expiration of the time limited by the terms of Paragraph 3 of said Act, the bankrupts should hold any such articles so pledged and pawned for the benefit and to the order of Sam Kleinman.

The bankrupts caused their employees to take drawers of pledges out of the vault at the Provident Loan Association and to total the principal amount of the pledges until they reached a sum in excess of \$100,000.00. The pledges were then placed in separate drawers along-side the other pledges in the vault, and the drawers marked with a "K". The bankrupts and all of their loan clerks had access to the vault and the drawers of pledges. The pawn ticket stubs were placed in a separate book and the initial "K" was placed on the outside of the book. These books of pawn ticket stubs were kept next to the remaining pawn ticket stub books. A duplicate set of pawn ticket stubs were not segregated from the rest of the records of the bankrupts. The bankrupts and their employees had access at [265]



all times to all of the pawn ticket stubs. No attempt was made to prevent the bankrupts or their employees from having access to them.

Whenever a customer wished to redeem a pledge and the particular pledge had been hypothecated with Sam Kleinman, the bankrupts or one of their loan clerks would go to the vault, remove the pledge and return it to the customer. The money received from the customer would be placed in the cash drawer and used again in the business without segregating it in any manner. The moneys received as a result of the redemption of pledges by customers were not placed in any trust account but went into and became a part of the general funds of the bankrupts. Sam Kleinman had full knowledge of this procedure and acquiesced to it. The pledgors and customers of the bankrupts, as well as creditors of the bankrupts, were never notified and had no knowledge of the attempted assignment of contracts to Sam Kleinman. The right to make collections was never given to Sam Kleinman and he did not make collections upon the said pledged account except in the ordinary course of business as an employee of the bankrupts. There never was a transfer of the pawn tickets or pledges. All of the property and assets at all times remained in the exclusive possession and control of the bankrupts. Sam Kleinman did not exercise any dominion or control over the pledges or the pledge ticket stubs except as an employee of the bankrupts. The bankrupts at all times had exclusive dominion and con-

trol of them. There was not any difference in the handling of the pledges or pledge ticket stubs after they were allegedly assigned to Sam Kleinman for security than there was before that time. That the attempted transfer of the pledges and pledge ticket stubs from the bankrupts to Sam Kleinman was a fiction, as no actual transfer ever took place. That the transaction between the bankrupts and Sam Kleinman was an attempt to give Sam Kleinman a more favorable position over other [266] creditors.

The said Sam Kleinman was supplied daily with a list of the pledges which had been redeemed.

On February 27, 1939, an attachment was levied against the bankrupts' business by another creditor. Sam Kleinman and Edward Dienstag were notified of the event and they participated in a conference with the attorney for the attaching creditor for the purpose of releasing the attachment. Arrangements were made to hypothecate certain pledges held by the bankrupts with the attaching creditor in order to release the attachment. Sam Kleinman permitted the bankrupts to use pledges which had been hypothecated to him for the purpose of making up the "security" for the attaching creditor. On the same day new pledges belonging to the bankrupts were set aside in the same manner as before for Sam Kleinman, to replace those which had been used for the attaching creditor.

At irregular intervals, ranging from a few days to a week, new notes and new contracts would be executed between the parties and new pledges would



be set aside in the same manner as was done previously. These covered redemptions made by the bankrupts' customers, pledges used for other creditors and new loans in the amount of \$8,350.00. They were not executed at the time the pledges were redeemed by the bankrupts' customers, or when the pledges were removed or money loaned, except as hereinbefore set forth with respect to the aforesaid attachment. The bankrupts and Sam Kleinman entered into a series of agreements bearing dates as set forth hereafter, all the said agreements being substantially in the same form and terms which said agreements were intended to be evidence of a portion of said \$100,000.00 obligation, together with new and additional sums advanced by the claimant to the bankrupts, totalling \$8,350.00:

1939    March    2.....\$25,920.00

[267]

“	22.....	2,510.00
“	28.....	2,000.00
“	31.....	2,200.00
April	5.....	2,000.00
“	3.....	2,500.00
“	8.....	2,000.00
“	11.....	2,200.00
“	13.....	2,100.00
“	15.....	2,200.00
“	18.....	2,500.00
“	21.....	2,000.00
“	24.....	1,500.00
“	28.....	2,500.00
May	2.....	1,200.00
“	9.....	3,700.00
“	13.....	2,000.00
“	25.....	3,400.00

June	2.....	3,750.00
“	7.....	3,400.00
“	23.....	3,900.00
“	28.....	4,800.00
July	5.....	2,400.00

That the note and agreement dated July 5, 1939, in the sum of \$2,400.00 was for payment of interest.

Whenever new notes and contracts were executed by and between the bankrupts and Sam Kleinman a check for the same amount as the note would be executed by Sam Kleinman's daughter, Jeanette Dienstag. This check was delivered to the bankrupts. When the check was cashed by the bankrupts the money was then returned to Sam Kleinman and re-deposited in Jeanette Dienstag's account. An employee of the bank inquired what the purpose was in following that procedure, and subsequently, the checks issued by Jeanette Dienstag were for an amount less than the note and the difference was written on the note as having been paid in cash. The foregoing method was a subterfuge, as the sums of money indicated were not actually paid to the bankrupts. [268]

That subsequent to February 24, 1939, Sam Kleinman advanced additional principal sums of money to the bankrupts, making a principal total of \$108,350.00. That in addition thereto, there was a balance owing to Sam Kleinman by the bankrupts on account of I.O.U.'s in the sum of \$350.00. That there was no agreement to pay interest on the said I.O.U. accounts. That at the time of the filing of the within proceedings the bankrupts were indebted to

Sam Kleinman in the sum of \$661.19, as the balance of interest due the creditor. That the bankrupts were also indebted to Sam Kleinman for commission on account of sales of jewelry in the sum of \$358.31, of which \$75.81 was earned within three months prior to July 10, 1939. That Sam Kleinman was indebted to the bankrupts in the amount of \$100.00, evidenced by I.O.U.'s signed by Sam Kleinman and in the possession of the bankrupts, in which amount the bankrupts are entitled to a credit. \* \* \*

That the following is a recapitulation of the account between the bankrupts and Sam Kleinman

Principal .....	\$108,350.00	
Balance of interest from February 24 to July 10, 1939.....	661.19	
Balance of principal on account of I. O. U.'s.....	350.00	
Commission on account of sales of jewelry, as a general claim	282.50	
	<hr/>	
Total general unsecured claim.....		\$109,643.69
		[269]
Amount of usurious interest, to which trustee is entitled as an off-set.....		\$24,321.01
		<hr/>
		85,322.68
Less credit of Sam Kleinman's I. O. U. held by bankrupts.....		100.00
		<hr/>
		\$85,222.68
That in addition Sam Kleinman is entitled to priority of payment as a labor claim in the sum of.....		\$ 75.81

CONCLUSIONS OF LAW

I.

That the alleged assignment of pledge tickets and pledges from the bankrupts to Sam Kleinman was void as against creditors of the bankrupts and as against the trustee-in-bankruptcy.

II.

That Sam Kleinman has a general unsecured claim in the sum of \$85,222.68, and a prior labor claim in the sum of \$75.81.

Dated this 17 day of January, 1941.

BENNO M. BRINK,

Referee-in-Bankruptcy.

Approved as to form

EUGENE L. WOLVER,

EDWARD DIENSTAG,

LOUIS MILLER,

By THEODORE A. HORN,

Attorneys for Claimant.

[Endorsed]: Filed Jan. 28, 1941. [270]



In the District Court of the United States  
Southern District of California  
Central Division  
In Bankruptcy No. 34490-H

In the matter of ABRAHAM ZEMANSKY,  
DAVID ZEMANSKY and SOL ZEMANSKY,  
doing business under the fictitious names and  
styles of PROVIDENT LOAN ASSOCIA-  
TION and STATE LOAN OFFICE,  
Bankrupts.

ORDER AND DECREE

The Objections of the Trustee in Bankruptcy in this matter came on regularly for hearing before the Honorable Benno M. Brink, Referee in Bankruptcy, after successive continuances, on the 21st day of August, 1940, at 10 o'clock A.M., Murray M. Chotiner, Frank C. Weller, and Hubert F. Laugharn appearing as attorneys for Paul W. Sampsell, Trustee in this matter, and Edward Dienstag, Eugene L. Wolver, Louis Miller and Theodore A. Horn, appearing as attorneys for claimant, Sam Kleinman.

The Court, after hearing the evidence and argument of counsel and being fully advised in the premises, and the matter having been submitted for determination, and the Court having filed its Findings of Fact and Conclusions of Law herein;

It Is Hereby Ordered, Adjudged and Decreed that the alleged assignment of pledge tickets and pledges from the bankrupts to Sam Kleinman as

security was and is void as against creditors of the bankrupts and as against the said Trustee-in-Bankruptcy, and

It Is Further Ordered, Adjudged and Decreed that the claim of Sam Kleinman filed herein, be, and the same is hereby allowed as a general unsecured claim in the sum of \$85,222.68, and as a prior labor claim in the sum of \$75.81.

Dated this 17th day of January 1941.

BENNO M. BRINK,

Referee-in-Bankruptcy.

Approved as to form.

EUGENE L. WOLVER,

EDWARD DIENSTAG,

LOUIS MILLER and

THEODORE A. HORN.

By THEODORE A. HORN,

Attorneys for Claimant.

[Endorsed]: Filed Feb. 28, 1941. [271]

---

[Title of District Court and Cause.]

PETITION FOR REVIEW  
OF REFEREE'S ORDER

To the Honorable Benno M. Brink, Esq., Referee  
in Bankruptcy:

The petition of Sam Kleinman respectfully shows  
as follows:

I.

That your petitioner heretofore duly filed his  
Proof of Claim in the above-entitled matter, where-

in it was set forth that the bankrupts herein were indebted to your petitioner in the sum of One Hundred Twenty-six Thousand Four Hundred Twenty-one and 61/100 (\$126,421.61) Dollars, which sum was secured by pledge; the sum of Three Hundred Fifty (\$350.00) Dollars unsecured; and the sum of Seven Hundred Fifty (\$750.00) Dollars unsecured, for which a priority was claimed as a labor claim.

## II.

That on or about the 24th day of May, 1940, Paul W. Sampsell, the Trustee in Bankruptcy herein, filed a petition in the above-entitled matter, entitled "Objections to Claim of Sam Kleinman, Objections to Right of Security thereunder, and Set-Offs to said Claim". That in said petition the said Trustee in Bankruptcy prayed that the claim of your petitioner be determined to be unsecured and that said claim be allowed and reduced as a general claim to the sum of Fifty Nine Thousand Twenty-four and 87/100 [272] (\$59,024.87) Dollars.

## III.

That upon the filing of said Objections by the said Trustee in Bankruptcy, an Order was duly made and entered by the Honorable Ernest R. Utley, Referee in Bankruptcy, setting for hearing the claims of your petitioner and the Objections thereto, in the courtroom of the Honorable Benno Brink, Referee in Bankruptcy, on the 5th day of June, 1940.

## IV.

That the hearing of said claims and objections was thereafter continued to the 21st day of August, 1940, when the same came on regularly for determination, the said claimant, appearing in person and by his counsel, Eugene L. Wolver, Louis Miller, Edward B. Dienstag and Theodore A. Horn, and the Trustee in Bankruptcy appearing in person and by his counsel, F. C. Weller, Hubert F. Laugharn and Murraray M. Chotiner.

## V.

That evidence, both oral and documentary, was introduced at said hearing; that the matter was thereafter submitted to the above-entitled Court, and on the 17th day of January, 1941, said Referee Benno Brink did make, enter and file in the records of the above-entitled matter his Findings of Fact and Conclusions of Law, and an Order and Decree thereon.

## VI.

That said Order and Decree, for which review herein is sought, is as follows, to-wit: [273]

## VII.

That said Order and Decree was and is erroneous for the following reasons:

1. That the evidence adduced at said hearing was insufficient to justify the said Order and Decree;
2. That said Order and Decree are against the law;



3. That there was no evidence in support of the following Findings of Fact, upon which the said Order and Decree is based:

(a) That on February 24, 1939, and for some time prior thereto, and continuously thereafter, Sam Kleinman had reasonable cause to believe, and did know, that the bankrupts, as co-partners, and as individuals, were insolvent. (That the evidence is wholly contrary to said Finding, and is summarized in Exhibit 1 (a) attached hereto and made a part hereof.)

(b) The pledge agreements, pledge property and pawn tickets remained in the possession and under the control of the bankrupts. (That the evidence is wholly contrary to said Finding, and is summarized in Exhibit 1 (b) attached hereto and made a part hereof.)

(c) The money received from the customer would be placed in the cash drawer and used again in the business of the bankrupts, without segregating it in any manner. (That the evidence is [275] wholly contrary to said Finding, and is summarized in Exhibit 1 (c) attached hereto and made a part hereof.)

(d) The moneys received as a result of the redemption of pledges by customers became a part of the general funds of the bankrupts, and that Sam Kleinman had full knowledge of this procedure and acquiesced to it. (That the evidence is wholly contrary to said Finding, and is summarized in Exhibit 1 (d) attached hereto and made a part hereof.)

(e) There never was a transfer of the pawn tickets or pledges, and that all of the property and assets at all times remained in the exclusive possession and control of the bankrupts, and that Sam Kleinman did not exercise any dominion or control over the pledges or the pledge ticket stubs, except as an employee of the bankrupts. (That the evidence is wholly contrary to said Finding, and is summarized in Exhibit 1 (e) attached hereto and made a part hereof.)

(f) That the bankrupts at all times had exclusive dominion and control of the pledge ticket stubs and pledges, and that there was not any difference in the handling of the pledges or pledge tickets after they were assigned to Sam Kleinman for security than there was before that time. (That the evidence is wholly contrary to said Finding, and is summarized in Exhibit 1 (f) attached hereto and made a part hereof.)

(g) That the transfer of the pledges and pledge ticket stubs from the bankrupts to Sam Kleinman was a fiction, and that no actual transfer ever took place. (That the evidence is wholly contrary to said Finding, and is summarized in Exhibit 1 (g) attached hereto and made a part hereof.)

(h) That the transaction between the bankrupts and Sam Kleinman was an attempt to give Sam Kleinman a more favorable position over other creditors. (That the evidence is wholly contrary to said Finding, and is summarized in Exhibit 1 (h) attached [276] hereto and made a part hereof.)

(i) That the checks executed by Sam Kleinman's daughter, Jeanette Dienstag, and delivered to the bankrupts in respect to new notes and contracts, was a subterfuge. (That the evidence is wholly contrary to said Finding, and is summarized in Exhibit 1 (i) attached hereto and made a part hereof.)

(n) That the bankrupts, as co-partners and as individuals, on July 10th, 1939, and for at least a year prior thereto, were insolvent. (That the evidence is wholly contrary to said Finding, and is summarized in Exhibit 1 (n) attached hereto and made [277] a part hereof.)

(o) That during the year prior to the bankruptcy proceedings, the amount of jewelry delivered to the claimant by the bankrupts for resale was diminished considerably by the bankrupts, for the reason that there was not as much jewelry on hand for sale. (That the evidence is wholly contrary to said Finding, and is summarized in Exhibit 1 (o) attached hereto and made a part hereof.)

(p) That the claimant knew that in 1936 and in 1937 there was sufficient money to make loans, and that after that time he knew there was not sufficient money to make all loans requested by customers; and that he also knew that many large loans were refused because the bankrupts were short of capital. (That the evidence is wholly contrary to said Finding, and is summarized in Exhibit 1 (p) attached hereto and made a part hereof.)

(q) That a duplicate set of pawn ticket stubs



were not segregated from the rest of the records of the bankrupts. (That the evidence is wholly contrary to said Finding, and is summarized in Exhibit 1 (q) attached hereto and made a part hereof.)

4. That the Court erred in making the following Conclusions of Law:

(a) That the assignment of pledge tickets and pledges from the bankrupts to Sam Kleinman was void as against creditors of the bankrupts, and as against the Trustee in Bankruptcy;

(b) That Sam Kleinman has a general unsecured claim in the sum of Eighty Five Thousand Two Hundred Twenty-two and 68/100 (\$85,222.68) Dollars. [278]

5. The Court erred in admitting in evidence Trustee's Exhibits 3, 14, 17 and 18, over the objections of the claimant, and all testimony based thereon.

6. The Court erred in denying the motion of the claimant, Sam Kleinman, to dismiss the Order to Show Cause issued upon the objections of the Trustee in Bankruptcy to the proof of claim of said claimant. (R. T. 511, 11. 5-13).

Wherefore: Your petitioner prays for a review of the said Order and Decree by the above-entitled



Court, and that the said Order and Decree be vacated and set aside.

SAM KLEINMAN

Petitioner.

EUGENE L. WOLVER,

LOUIS MILLER,

EDWARD B. DIENSTAG and

THEODORE A. HORN

By: EDWARD DIENSTAG

Attorneys for Petitioner.

[279]

---

[Title of District Court and Cause.]

REFEREE'S CERTIFICATE ON PETITION  
FOR REVIEW BY SAM KLEINMAN

To the Honorable Judges of the Above Entitled  
Court:

I, Benno M. Brink, one of the Referees in Bankruptcy of this Court, do hereby certify to the following:

Sam Kleinman, a creditor in this matter, has filed his petition for review from an order made by your Referee in this matter on January 17, 1941, in which he sustained certain objections which had been made by the Trustee herein to the claim filed in this matter by the said petitioner on review, who will hereafter be referred to as "Kleinman."

## THE PROCEEDINGS

This bankruptcy matter began as a Chapter XI proceeding but later an order of adjudication was made and bankruptcy is now being proceeded with. The case is pending before Referee Ernest R. Utley but the matter involved in this review was heard and determined by your Referee.

The bankrupts were pawnbrokers and as such carried on an extensive business in the City of Los Angeles. To finance their operations they borrowed large sums of money from various individuals, including Kleinman, to whom at the time of bankruptcy they were indebted in the approximate sum of \$108,000.00. Practically all of the obligations of the bankrupts to the aforesaid individuals from whom they borrowed money were unsecured. [333]

Kleinman began loaning money to the bankrupts in 1927 and from 1933 on they were continuously indebted to him. From 1935 on Kleinman was associated with or employed by the bankrupts on a salary and commission basis for the purpose of selling jewelry which had been pledged with the bankrupts but which had not been redeemed. From time to time Kleinman also assisted as a loan clerk in one of the places of business maintained by the bankrupts.

Up to 1939 Kleinman had no security for any of the money loaned by him to the bankrupts. However, in January of that year he requested that he be given security for the amount owing

to him which then approximated \$100,000.00 and which was evidenced by certain promissory notes which had been executed from time to time by the bankrupts in favor of Kleinman. Negotiations followed and on February 24, 1939, new notes, aggregating \$100,000.00, were executed by the bankrupts in favor of Kleinman and at the same time an agreement in writing was entered into between the parties which provided, among other things; (1) That the bankrupts agreed to "transfer and deposit, by way of pledge with said second party as collateral security for the payment of said twenty (20) promissory notes, . . . . the pledge agreements and pawn tickets, the numbers of which are contained in Exhibit A attached hereto and made a part hereof, which are now in the possession of the first parties. (the bankrupts);" (2) That Kleinman appointed the bankrupts as agent "for the purpose of collecting any and all sums of money which may be due, owing, or unpaid upon and in respect to each of the said pawn tickets, and pledge agreements, and first parties (the bankrupts) do hereby agree to collect such moneys and hold the same in trust for the purpose of applying such money so collected to the payment of the twenty (20) promissory notes hereinbefore described, and first parties will, upon demand, so pay and apply said moneys to the payment of the said promissory notes;" and (3) That the bankrupts agreed "to retain in their possession every article pledged [334] and pawned to them in respect to



and by virtue of the foregoing pawn tickets, and to deliver them to the owners thereof, or assignees of said owners, only upon redemption of said pawn tickets by the payment of the same as provided in Section 3 of Statutes of California, 1935, Page 1613; and after the expiration of time limited by the terms of said Paragraph 3 of said Act, first parties shall hold any such articles so pledged and pawned for the benefit of and to the order of second party."

In connection with the aforesaid agreement Kleinman acknowledged in writing the receipt from the bankrupts of the pledge agreements and pawn tickets therein described. (Kleinman's Exhibit No. 4.) At the same time the bankrupts acknowledged in writing the receipt of the said agreements and pawn tickets from Kleinman. (Trustee's Exhibit No. 4.)

Thereafter, and from time to time, agreements similar in character to the one of February 24, 1939, were executed by the bankrupts and Kleinman to cover new notes given by the bankrupts to Kleinman for collections made by the bankrupts on the aforesaid pledge agreements and pawn tickets, for certain of the said pledge agreements and pawn tickets which were released by Kleinman and for new money loaned by Kleinman to the bankrupts in the sum of *of* \$8,350.00. The new notes which were given for the collections made by the bankrupts and for the pledge agreements and pawn tickets released by Kleinman reduced



correspondingly the notes already held by Kleinman.

This bankruptcy proceeding commenced with the filing of a Chapter XI petition on July 10, 1939. At that time all or substantially all of the pledge agreements and pawn tickets covered by the then outstanding agreements between the bankrupts and Kleinman were in possession of the bankrupts as were also all of the articles which had been pledged and pawned to the bankrupts with respect to the said pawn tickets. A receiver being appointed he took possession [335] of the said pledge agreements and pawn tickets and the said articles so pledged and they, or the proceeds thereof, are now in the possession of the Trustee in Bankruptcy awaiting the outcome of this litigation.

After the adjudication in bankruptcy in this matter Kleinman filed his claim for \$126,401.61 as principal, interest, and attorneys' fees on the notes he then held under the aforesaid agreements and for an unsecured item of \$370.00 and for a prior labor claim of \$750.00. Attached to the claim were copies of the then outstanding agreements between the bankrupts and Kleinman. It was alleged in the said claim that the aforesaid item of \$126,401.61 was secured by the aforesaid agreements and the pledge tickets, properties and rights therein granted or secured by the terms, covenants and conditions in said agreements.

In due course the Trustee herein filed his objections to the said claim in which he alleged, among

other things, (1) that the said claim was wholly unsecured for the reason that all of the property and assets claimed by the said Kleinman as security remained at all times in the possession and control of the bankrupts; (2) that any attempt by the bankrupts to assign to Kleinman any contracts held by them in their business as pawnbroker was illegal and contrary to the laws of the State of California; (3) that the agreements with Kleinman, which were within four months of the commencement of this proceeding on July 10, 1939, were preferential and void under the Bankruptcy Act; \* \* \*

After due hearing your Referee, on January 17, 1941, made his order in which, in substance, he ruled that Kleinman's claim was wholly unsecured. \* \* \* [336] It is from this order that this review is taken.

## THE QUESTIONS PRESENTED

In his petition for review Kleinman makes these contentions:

1. That the evidence is insufficient to justify your Referee's order.
2. That your Referee's order is against the law.
3. That there was no evidence in support of those portions of your Referee's findings of fact which are detailed in subparagraph 3 of paragraph VII on Pages 3 to 7 of the petition for review.

4. That your Referee erred in those portions of his conclusions of law which are detailed in subparagraph 4 of paragraph VII on page 7 of the petition for review.

5. That your Referee erred in admitting in evidence the exhibits and the testimony mentioned in subparagraph 5 of paragraph VII on page 8 of the petition for review.

6. That your Referee erred in denying Kleinman's motion to dismiss the objections filed by the Trustee to his claim at the conclusion of the Trustee's case.

Kleinman's contentions as above set forth present briefly these questions for determination:

#### On the Question of Kleinman's Security

(a) Was there an actual delivery and an actual change of possession from the bankrupts to Kleinman of the pledge agreements and pawn tickets here involved or of the articles which had been pledged to the bankrupts in respect thereto?

(b) Were the agreements between Kleinman and the bankrupts valid as against the Trustee in Bankruptcy and the [337] creditors of the bankrupts without an actual delivery and an actual change of possession from the bankrupts to Kleinman of the pledge agreements and pawn tickets or of the articles which had been pledged to the bankrupts in respect thereto?



### The Evidence

The evidence on the questions presented by this review is contained in a complete transcript of the proceedings and in the exhibits in the case, all of which are going up with this certificate.

### Referee's Findings of Fact

Your Referee's findings of fact on the questions presented by this review are contained in the document captioned "Findings of Fact and Conclusions of Law which is going up with this certificate. For the information of the Court your Referee is also sending up with this certificate the Trustee's proposed findings of fact, Kleinman's proposed amendments thereto, and the [338] Trustee's reply to said proposed amendments, all of which were duly considered by your Referee in deciding upon the findings of fact and conclusions of law which he finally signed in this matter.

Your Referee's findings on the questions of fact presented by this review as set forth in his afore-said findings of fact and conclusions of law may be thus briefly set forth:

#### On the Question of Kleinman's Security .

(a) Your Referee found that there was no actual delivery and no actual change of possession from the bankrupts to Kleinman of the pledge agreements and pawn tickets here involved or of the articles which had been pledged to the bankrupts in respect thereto. [339]



## Referee's Conclusions of Law

Your Referee's conclusions of law on the questions presented by this review are contained in the aforesaid instrument captioned Findings of Fact and Conclusions of Law which is going up with this certificate. Briefly stated, your Referee's conclusions were:

## On the Question of Kleinman's Security

(a) Your Referee concluded that the agreements between the bankrupts and Kleinman were void as against the Trustee in bankruptcy and the creditors of the bankrupts and that, therefore, Kleinman's claim was wholly unsecured.

## Papers Submitted

I hand up for the information of the Court the following papers:

1. Objections to claim of Sam Kleinman, filed May 23, 1940.
2. Reporter's transcript of testimony and proceedings adduced at hearing on objections by Trustee to claim of Sam Kleinman, Volumes I, II and III. [340]
3. The following Exhibits:

Trustee's Exhibit No. 1—(By reference) Objections of trustee to claim of Sam Kleinman, page 8, line 25 to page 9, line 11.

Trustee's Exhibit No. 2—(By reference) Objections of trustee to claim of Sam Kleinman, page 11 line 26 to page 12, line 11.

Trustee's Exhibit No. 3—(By reference)

Objections of trustee to claim of Sam Kleinman, page 2, line 28 to page 4, line 32.

Trustee's Exhibit No. 4—Agreement dated February 24, 1939.

Trustee's Exhibit No. 5—Contract dated March 2, 1939. (by reference)

Trustee's Exhibit No. 6—Contract dated March 22, 1939. (by reference)

Trustee's Exhibit No. 7—Debtor's Schedules and Amendments. (by reference)

Trustee's Exhibit No. 8—Pledge Ticket.

Trustee's Exhibit No. 9—Pledge Bag.

Trustee's Exhibit No. 10-A—Photograph of Vault.

Trustee's Exhibit No. 10-B—Photograph of Vault.

Trustee's Exhibit No. 10-C—Photograph of Vault.

Trustee's Exhibit No. 10-D—Photograph of Vault.

Trustee's Exhibit No. 11—Tabs dated July 5 and 6, 1939.

Trustee's Exhibit No. 12—Promissory notes with signatures cut out.

Trustee's Exhibit No. 13—Promissory notes with signatures cut out.

Trustee's Exhibit No. 14—Schedule of interest accrued.

Trustee's Exhibit No. 15—Cancelled check for \$800.00.

Trustee's Exhibit No. 16—Cancelled check for \$500.00.

Trustee's Exhibit No. 17—List of interest checks.

Trustee's Exhibit No. 18—Interest payment checks.

Kleinman's Exhibit No. 1—Pawn ticket.

Kleinman's Exhibit No. 2—I. O. U. dated June 8, 1939.

Kleinman's Exhibit No. 3—Memo. of Redemptions.

Kleinman's Exhibit No. 4—Copy of contract of of February 24, 1939. [341]

Kleinman's Exhibit No. 5—Ledger Sheet.

Kleinman's Exhibit No. 6—Book of pledges.

Kleinman's Exhibit No. 7—Inventory Sheet.

Kleinman's Exhibit No. 8—Five pages of pledge numbers.

4. Trustee's proposed findings of fact and conclusions of law.
5. Kleinman's proposed amendments to proposed findings of fact and conclusions of law.
6. Trustee's reply to Kleinman's proposed amendments to findings of fact and conclusions of law.
7. Findings of fact and conclusions of law dated January 17, 1941.
8. Order and decree, dated January 17, 1941.
9. Petition for review of Referee's order, filed February 13, 1941.

Respectfully Submitted this 27th day of February, 1941.

BENNO M. BRINK

Referee in Bankruptcy.

[Endorsed]: Filed Feb. 28, 1941. [342]

---

[Title of District Court and Cause.]

Memorandum of Conclusions,  
of  
Judge Hollzer

February 6, 1942

This proceeding comes before the court upon a review prosecuted by one Sam Kleinman, hereinafter referred to as claimant, from an order of the Referee disallowing the claim filed herein by the former as a secured claim but approving the same as an unsecured claim in the amount of \$85,222.68 and as a prior labor claim in the sum of \$75.81.

The record upon which this review has been presented is exceedingly voluminous, covering not only many hundreds of pages of the reporter's transcript, but also including numerous exhibits. The questions requiring determination have been briefed at great length, and in addition, more than two days have been devoted to oral argument by able and experienced counsel. The great industry and exhaustive research thereby demonstrated merit commendation.



While the interested parties no doubt may feel that the points presented call for an opinion commensurate in length with that of the voluminous briefs, nevertheless, the demands made upon our time by other pending proceedings will not warrant the same.

The facts as found by the Referee are in substance as follows:

At the time of the filing of these bankruptcy proceedings and for many years prior thereto, the bankrupts were [375] engaged in business as pawnbrokers. Originally they operated a single establishment known as "State Loan Office", and subsequently they maintained a second establishment under the name of "Provident Loan Association".

In the operation of their pawnbroking business the procedure followed in making a loan was in effect that a pawn ticket, containing a general description of the article pawned, was given to the borrower. A stub containing a detailed description of the pawned article was kept as a part of the records of the bankrupts. The jewelry, which usually constituted the pawned article, was placed in an envelope and kept in a drawer in one of the vaults belonging to the bankrupts.

Claimant started loaning money to the bankrupts about 1927, upon interest at the rate of 12% per annum, but without security. By 1929, all sums loaned by him to the bankrupts up to that time had been repaid. In 1933, he resumed loaning money

to them, and again no security was given. From time to time thereafter, and up to the Spring and Summer of 1939, he continued to loan to them various sums. At first the interest on these loans was fixed at 12% per annum. However, in 1936 the interest was specified at 10% per annum, and in 1938 further loans were made at the rate of 7%.

By July 1, 1936 these loans totalled \$50,000 and were evidenced by ten notes bearing that date, each in the principal sum of \$5,000 with interest at 10% per annum, and payable one day after date. On November 14, 1936 claimant loaned to the bankrupts the additional sum of \$20,000, the same being evidenced by a note for that amount payable in 30 days. A further loan was made by him on March 25, 1938 [376] in the amount of \$19,000, for which a note was given payable one day after date. On July 26 of the same year he loaned to the bankrupts \$5,000 additional, as evidenced by two notes, one for \$3,000 payable on demand, and the other for \$2,000 payable in 30 days. Again on December 17, 1938 he extended to them an additional loan of \$1700, for which he received a note payable one day after date. All notes executed during 1938 bore interest at the rate of 7% per annum.

In addition, the bankrupts borrowed from claimant from time to time between 1934 and February 1939, various sums of money *raning* from \$100 to \$15,000 at any one time, but each of these loans was evidenced by an IOU, without any interest being specified thereon.

None of these loans was secured.

In 1935 the bankrupts employed claimant at their establishment known as Provident Loan Association. He continued in that employment up to the date of bankruptcy. Originally his duties consisted of selling unredeemed jewelry. The monies received from such sales went into the operation of the bankrupts' business. Subsequently his duties included that of a loan clerk, namely lending money to the bankrupts' customers who pledged jewelry or other property as security for the repayment of such loans. From the time he entered such employment and up to about the end of 1938 claimant was paid a salary of \$75.00 per week plus a commission of 1% upon the merchandise sold by him. Thereafter, he accepted a reduction in salary, knowing there was not enough work for him to do, he also stating that he was in poor health and desired a vacation.

By 1938 the volume of merchandise on hand for sale had decreased materially. In that year and also during 1939 his duties were divided between the two jobs of selling merchandise [377] and serving as a loan clerk. At the Provident Loan Association he had access to and was familiar with the cash drawer where the money was kept for the purpose of making loans to customers. In 1936 and 1937 he knew that there were sufficient funds to make loans. He also knew that in 1938 and the following year there was not sufficient money to



make all loans requested by the customers. During the latter period he told the bankrupts and their employees that there was not enough money to make loans and asked them to obtain the necessary funds. On many of these occasions the bankrupts did not provide the necessary funds. He further knew that many large loans were refused because the bankrupts were short of capital, and that many loans to customers were not made because of the lack of funds.

At all times before and since claimant became a creditor of the bankrupts, the latter were indebted to other creditors, and there continued to be such creditors up to and at the time of the commencement of these bankruptcy proceedings.

About January, 1939 (claimant asserts it was in December, 1938) claimant demanded from the bankrupts security for the above mentioned loans. His son-in-law, an attorney negotiated with them for security. Originally he requested that pawned articles then held by the bankrupts in pledge be given for security. They informed him they were unable to do so as that was not permitted under the law. Claimant's attorney informed them he had a plan whereby the security could be given.

On or about February 24, 1939 the bankrupts were indebted to claimant in the sum of \$99,379.00. About the same date he advanced to them an additional amount of \$621.00. On the date mentioned, the bankrupts and claimant executed an agreement



which in effect declared, among other provisions, [378] that they were desirous of having this indebtedness secured by way of pledge, and that to secure the same the bankrupts were desirous of pledging pawn tickets held by them as pawnbrokers. Said contract, in addition to providing for the making and delivery of certain notes, also stipulated in effect that the bankrupts agreed to transfer and deposit by way of pledge with claimant as collateral security for the payment of said notes certain pledge agreements and pawn tickets. Claimant by said contract attempted to constitute the bankrupts his agents for the purpose of collecting money under said pledges. Said contract further provided that the bankrupts were to retain in their possession the articles pledged and pawned in respect to and by virtue of the pawn tickets, and to deliver them to the owner thereof or assignees of said owners only upon redemption of said pawn tickets by the payment of the same as provided by Section 3 of the Statutes of California, 1935, page 1613; and further that after the expiration of the time limited by the terms of Paragraph 3 of said Act, the bankrupts should hold any such articles so pledged and pawned for the benefit and to the order of claimant. Pursuant to said contract of February 24, 1939 the bankrupts executed and delivered to claimant twenty notes, each in the principal amount of \$5,000.

The bankrupts caused their employees to take

drawers of pledges out of the vault at the Provident Loan Association, and to total the principal amount of the pledges until they reached a sum in excess of \$100,000. The pledges (approximately 1200 in number) were then placed in separate drawers alongside the other pledges in the vault, and these drawers were marked with a "K". The bankrupts and all of their loan clerks had access to the vault and the drawers containing the pledges. The pawn ticket stubs were placed in a [379] separate book and the initial "K" was placed on the outside of the book. These books of pawn ticket stubs were kept next to the remaining pawn ticket stub books. The bankrupts and their employees at all times had access to all of the pawn ticket stubs. No attempt was made to prevent them from having such access.

Whenever a customer wished to redeem a pledge, including any pledge which had been hypothecated with claimant, the bankrupts or one of their loan clerks would go to the vault, remove the pledge and return it to the customer. Claimant had full knowledge of this procedure and acquiesced in it. The pledgors and customers of the bankrupts, as well as creditors of the bankrupts, were never notified and had no knowledge of the attempted assignment to claimant. The right to make collections was never given to him, and he did not make collections upon said pledged accounts, except in the ordinary course of business as an employee of the bankrupts. He was supplied daily with a list of the pledges

which had been redeemed. On February 27, 1939 an attachment was levied against the bankrupts' business by another creditor. Claimant and his attorney were notified of the event, and they participated in a conference with the attorney for the attaching creditor for the purpose of releasing the attachment. Arrangements were made to hypothecate certain pledges, held by the bankrupts, with the attaching creditor in order to release the attachment. Claimant permitted the bankrupts to use pledges which the parties had undertaken to hypothecate to him, in order to make up the security for the attaching creditor. On the same day new pledges belonging to the bankrupt were set aside in the same manner as previously for claimant, to replace those which had been [380] used for the attaching creditor.

Thereafter at irregular intervals, ranging from a few days to a week, new notes and new contracts would be executed between the bankrupts and claimant, and new pledges would be set aside in the same manner as had been done previously. These covered redemptions made by the bankrupts' customers, pledges used for other creditors and new loans in the amount of \$8,350.00. They were not executed at the time the pledges were redeemed by the bankrupts' customers, or when the pledges were removed or money loaned, except as previously set forth with respect to the aforesaid attachment. Between March 3, and July 5, 1939, the bankrupts and



claimant entered into a series of agreements bearing dates as set forth hereafter, all said agreements being substantially in the same form and terms, and which were intended to be evidence of a portion of said indebtedness of \$100,000, together with new and additional sums advanced by claimant to them, totalling \$8,350.00, as follows, to-wit:

1939	March	2.....	\$25,920.00
	March	22.....	2,510.00
	“	31.....	2,200.00
	April	5.....	2,000.00
	“	3.....	2,500.00
	“	8.....	2,000.00
	“	11.....	2,200.00
	“	13.....	2,100.00
	“	15.....	2,200.00
	“	18.....	2,500.00
	“	21.....	2,000.00
	“	24.....	1,500.00
	“	28.....	2,500.00
	May	2.....	1,200.00
	“	9.....	3,700.00
	“	13.....	2,000.00
	“	25.....	3,400.00
	June	2.....	3,750.00
	“	7.....	3,400.00
	“	23.....	3,900.00
	“	28.....	4,800.00
	July	5.....	2,400.00

[381]

The note and agreement made under date of July 5, 1939 involved the payment of interest in the amount of \$2400.00. Whenever new notes and contracts were executed between the parties a check for the same amount as the note would be executed by claimant's daughter and delivered to the bank-



rupts. When the check was cashed by the bankrupts the money was then returned to claimant and re-deposited in his daughter's account. An employee of the bank inquired what the purpose was in following that procedure, and subsequently the checks issued by claimant's daughter were for an amount less than the note and the difference would be written on the note as having been paid in cash. The foregoing method was a subterfuge as the sums of money indicated were not actually paid to the bankrupts. All notes executed on and after February 24, 1939 stipulated for interest at the rate of 10% per annum.

These bankruptcy proceedings were commenced July 10, 1939. The bankrupts as co-partners and as individuals at that time and for at least a year prior thereto were insolvent. At the time said proceedings were commenced they were indebted to claimant in the sum of \$661.19 on account of interest, also in the further amount of \$358.31 as commission on account of sales of jewelry, in addition to the principal sums hereinbefore stated. Of this latter amount the sum of \$75.81 had been earned within three months prior to July 10, 1939. Likewise, on the latter date, claimant was indebted to the bankrupts in the amount of \$100 as evidenced by IOU's he had signed and delivered to them.

While in their opening brief counsel for claimant have set forth five specific findings of the Referee dealing with the subject matter of security, and

also have therein [382] called attention to two additional specific findings, the latter dealing with the subject matter of a preference, and likewise have therein specified three further findings, the latter dealing with the subject matter of usury, all of which they contend are not supported by the evidence, or are contrary to the great weight of the evidence, no attack is made in said brief upon the findings embodying the facts hereinbefore recited.

In addition to the foregoing, the referee also found:

“There never was a transfer of the pawn tickets or pledges, all of the property and assets at all times remaining in the exclusive possession or control of the bankrupts \* \* \* that the attempted transfer of the pledges and pledge ticket stubs from the bankrupts to Sam Kleinman was a fiction as no actual transfer ever took place.”

“Sam Kleinman did not exercise any dominion or control over the pledges or pledge ticket stubs, except as an employee of the bankrupts. \* \* \* The bankrupts at all times had exclusive dominion and control of them. \* \* \* There was not any difference in the handling of the pledges or pledge ticket stubs after they were allegedly assigned to Kleinman for security than there was before that time.”

“The money received from the customer would be placed in the cash drawer and used

again in the business, without segregating it in any manner, \* \* \* The monies received as a result of the redemptions of pledges by customers were not placed [383] in any trust account but went into and became a part of the general funds of the bankrupts.”

“The pledge tickets, pledge property and pawn tickets, however, at all times remained in the possession and under the control of the bankrupts.”

“A duplicate set of pawn ticket stubs were not segregated from the rest of the records of the bankrupts.”

“That the transaction between the bankrupts and Sam Kleinman was an attempt to give Sam Kleinman a more favorable position over other creditors.”

“That on February 24, 1939, and for some time prior thereto, and continuously thereafter, Sam Kleinman had reasonable cause to believe and did know that the bankrupts, as co-partners and as individuals, were insolvent.” [384]

Counsel for claimant concede that the rule of law governing the review of the findings of a Referee will be found in certain decisions of our Ninth Circuit Court of Appeals, more particularly, in the cases of *Ott v. Thurston*, 76 F. (2d) 368 and *Weinstein Bros. v. Laugharn*, 84 F. (2d) 419. In the



first of the two cases cited, the Court quoted with approval the following statement:

“It is the recognized rule of the federal courts—and especially in matters of bankruptcy—that on review of the decision of a referee, based upon his conclusions on questions of fact, the court will not reverse his findings unless the same are so manifestly erroneous as to invoke the sense of justice of the court.” (citing cases).

In the other case cited the court declared it to be “the familiar rule that where facts are litigated before the referee, and where the witnesses have appeared before him, and a decision upon the controverted facts had been made by him, the court will not ordinarily be justified in reversing the finding of the referee as to the controverted facts.” (citing cases).

[385]

Supplementing their discussion of the findings attacked in their opening brief, particularly in reply to the arguments presented in the brief filed on behalf of the trustee, counsel for claimant assert:

“The statement of facts as set forth by the trustee *presents the evidence only in the light most favorable to the trustee and ignores qualifications and modifications thereof brought out on subsequent examination of the witnesses.* (emphasis ours) The statement of facts as presented is incomplete and one-sided, and in



a considerable number of material instances is contrary to and is not founded upon the evidence adduced at the hearing of the matter.”

The foregoing quotation we think fairly epitomizes the arguments advanced on behalf of claimant in support of their contention to the effect that the findings of the referee are not sustained by the evidence in the particulars hereinbefore set forth.

Most of the evidence consists of testimony given by the various witnesses, some produced on behalf of claimant, and others called on behalf of the trustee in bankruptcy. To a very considerable extent the referee was called upon to resolve conflicts in the testimony of some of the witnesses. In other instances he was required to pass upon seeming contradictions in the testimony given at different times by the same witness. In addition, it was necessary for him to determine what inferences were reasonably warranted in the light of such evidence as he found to be true. In all of these instances he was naturally passing upon the credibility of the witnesses. [386]

Our appraisal of the record, including the facts and circumstances heretofore outlined, also keeping in mind the knowledge, or at least equivalent notice, which one, occupying the advantageous position which for nearly four years claimant enjoyed, may reasonably be presumed to have had, and also the inferences which may properly be drawn from the evidence, convinces us that the most that can

be fairly urged in support of claimant's attack upon the sufficiency of the findings would be to say that the referee would have been justified either in finding the facts to be as contended for on behalf of claimant, or in adopting those most favorable to the trustee, so far as they pertain to the issues of security and of preference. Granted that one who had not heard the witnesses, and thus lacked adequate opportunity to judge their credibility, might have been warranted in drawing inferences contrary to those found by the referee, nevertheless, we are persuaded that the rule announced in the previously cited cases, decided by our Ninth Circuit Court of Appeals, requires us to sustain the findings pertaining to the two issues last mentioned.

In addition to their attack upon the sufficiency of the evidence to sustain certain specific findings, counsel for claimant have advanced certain legal propositions. These are embraced in the following questions, to-wit:

Did the contract of February 24, 1939, and the subsequent agreements between claimant and the bankrupts, give to the former a secured claim of the character he now seeks to enforce against the estate of the bankrupts?

Did the aforementioned agreements constitute voidable preferences? [387]

Respecting the first of these three questions counsel for claimant in their opening brief have advanced the following points:

“Security.

1. That the agreements between Kleinman and the bankrupts provided for a pledge of choses in action as collateral for the repayment of the loans evidenced by the notes attached to Kleinman’s proof of claim on file herein.

2. That the validity of the foregoing pledge agreements is determined by the law of the State of California.

3. That under the Law of the State of California the pledge agreements are valid and effectively created the security for Kleinman’s loans.

(a) There was no necessity for delivery of the choses in action, to wit, the pawn tickets.

(b) The pawn brokers law of the State of California does not deprive a pawn broker from assigning pawn tickets in pledge as collateral security for his debt.

4. Under the California Law a pledgee is not required to maintain dominion or control over the pledge res when the same consists of choses in action.

5. Assuming that dominion and control are required to be maintained, nevertheless, where the pledgee of choses in action reserves or maintains substantial control over the pledge res the assignment of the [388] pledge and the pledge agreements will be sustained against the trustee in bankruptcy.”

In their closing brief counsel for claimant assert:



“The Trustee has consistently fallen into the error of assuming that the subject of the pledge agreements between Kleinman and the bankrupts was the tangible pawns in the possession of the bankrupts. As we have pointed out, however, in our opening Brief, page 60ff. and as has been maintained at all times herein, the subject and the only subject of the pledge agreements between the parties were the pawn tickets executed by the bankrupts’ customers evidencing their promise to repay loans obtained from the bankrupts. This central distinction must at all times be borne in mind. It is supported by two positive elements:

- (a) The contracts and writings of the parties.
- (b) The acts and interpretation of the parties.”

Accordingly, the following additional points are urged on behalf of claimant:

“1. Change of possession was unnecessary for the reason that the subject of the pledge between Kleinman and the bankrupts was choses in action, the transfer of which was evidenced by writings.

This is supported by:

- (a) The contracts and writings of the parties.
- (b) The acts and interpretation of the parties and the applicable law.

2. Even if a change of possession of the sub-



ject of the pledge was necessary, there was such a change of possession. [389]

3. The documents themselves as executed by the parties clearly indicate that there was a present assignment of the pawn tickets therein described.

(a) To ascertain intent of the parties to a contract, the court will construe all writings pertaining to the contract and executed by the parties thereto at or about the same time.

(b) The language used by the parties is sufficient to and did create a present executed transfer by way of pledge.

4. Under the law and the facts, the pledged property, to-wit, the pawn tickets were separable, and were separated, from the tangible pawns.

5. It is immaterial to the rights of the parties whether or not the pawnbroker can or cannot assign or deliver possession of the pledges, to-wit, the tangible pawns.

6. Kleinman as the pledgee of the choses in action, reserved and maintained such substantial control over the pledge res as to create a lien valid against the Trustee in bankruptcy.”

Counsel for claimant have cited quite a large number of cases in support of the proposition that a chose in action may be transferred to secure the payment of a note, and that a change of possession of such chose in action is not necessary in order to render the security effective, but that a written assignment thereof is sufficient, and further that the

assignee's control over such security need not be absolute and complete, but may be limited and partial. Many [390] pages of the opening and closing briefs have been devoted to a discussion of this proposition and to an analysis of the supporting cases, and likewise a considerable portion of the oral argument has been directed toward the same point.

Repeatedly we find counsel for claimant insisting, "the basic premise of the trustee in his attack upon the security transaction between the parties is that the subject of the pledge agreements was tangible personal property"; whereas "the contracts of the parties and their acts in respect thereto" show that "this is fundamental error; that the true subject of Kleinman's pledges were the customers' pawn tickets."

Thus it becomes clear that counsel for claimant recognize that no valid pledge of "the tangible pawns in the possession of the bankrupts" could have been given as security for the payment of the notes involved herein, and also that if the contract of February 24, 1939 may fairly be construed as designed to accomplish that very result then it must be held that claimant obtained no secured claim.

Accordingly the question arises:

By admitting that under California law a pawnbroker is prohibited from pledging "tangible pawns" prior to the expiration of the time within which the same may be redeemed, and by contending that "the true subject of Kleinman's pledges were the customers' pawn tickets", does claimant thereby concede

that he asserts no interest in said "tangible pawns", that he has no right to control the disposition of the same, and that he is not entitled to have the proceeds derived from the sale thereof applied toward the payment of said notes? [391]

In neither of the briefs filed on behalf of claimant have we found an unequivocal, affirmative answer to this question. The oral argument likewise gave no such answer.

Counsel for claimant contend, and properly so, that we must give heed to the intention of the parties; and that in order to ascertain their intention the writings of the parties, their acts and the interpretation which they have placed upon the same, must be taken into consideration. In this connection counsel have quoted certain portions of the contract of February 24, 1939. In addition, counsel in their opening brief have directed attention to fourteen separate and distinct steps which they contend were taken by the parties upon the execution of the aforementioned contract and pursuant thereto. These it is claimed demonstrate clearly and convincingly that "the bankrupts did not have unfettered and uncontrolled dominion over the pledge res", but that on the contrary "Kleinman maintained close supervision and control over the pawn tickets and the proceeds arising therefrom."

However, in addition to the excerpts quoted by counsel, as above mentioned, there is still another provision in this contract which has received virtually no consideration either in the briefs or the oral



argument, namely, Paragraph Seventh of said agreement. This provision reads as follows:

“Seventh: First parties do hereby agree to retain in their possession every article pledged and pawned to them in respect to and by virtue of the foregoing pawn tickets, and to deliver them to the owners thereof, or assignees of said owners, only upon redemption of said pawn tickets by the payment of the same as provided in Section 3 of the Statutes of California, 1935, page 1613; and after the [392] expiration of the time limited by the terms of said Paragraph 3 of said Act, first parties shall hold any such articles so pledged and pawned for the benefit of and to the order of second party.”

Examined in the light of the restrictions sought to be imposed by the terms and conditions set forth in the provision last quoted, the acts and conduct of the parties, not merely those referred to in the above mentioned fourteen separate and distinct steps, but also those disclosed by the balance of the evidence, clearly demonstrate that the parties to said contract considered that the “customers’ pawn tickets” as distinguished from the “tangible pawns” that is to say, that these so-called choses in action, if separated from and deprived of the security represented by the “tangible pawns”, had virtually no value. Accordingly, as shown by the evidence, claimant undertook through various devices to effectuate not merely the segregation and identification of some 1200 pawn tickets, but also the segregation and identification of



the corresponding “tangible pawns”, which alone gave these choses in action whatever value they possessed as security for the payment of the notes held by him. All of this was designed to deprive the bankrupts of all real control over such “tangible pawns”, and to transfer the same to claimant, and thereby bring about the surrender, and in effect, the pledge of such “tangible pawns” to the latter.

Obviously claimant never has been willing, and in this proceeding has not offered, to allow the proceeds from the sales of these “tangible pawns” to be disposed of on the basis that he has no lien thereon, and has never acquired any primary claim thereto. [393]

Thus it becomes clear that through the instruments executed by claimant and the bankrupts, and by the acts and conduct of the parties, the former undertook to secure a pledge lien upon the “tangible pawns”, and thereby accomplish indirectly that which the law forbade the bankrupts as pawnbrokers from doing directly.

However, in order to have made this plan legally enforceable, even assuming that the prohibition of the Pawnbroker’s Act could have been disregarded, it still would have been necessary for the bankrupts to have surrendered possession and control over the “tangible pawns”. Such relinquishment of possession and control, as all parties concede, never took place. It follows, therefore, that claimant never acquired a secured claim against the estate of the bankrupts.

We shall now direct our attention to the question

as to whether the contract of February 24, 1939, and the subsequent agreements executed between claimant and the bankrupts, constitute voidable preferences.

As heretofore noted, about December, 1938, or January, 1939, a chain of events was set in motion, leading to the execution, on February 24, 1939, of a contract and other documents by claimant and the bankrupts. According to claimant, through the execution of these documents a radical change in the business relations between the bankrupts and himself took place, and thereby he obtained security for the repayment, not only of the indebtedness then owing to him by the bankrupts, but also of subsequent loans. All parties virtually concede that the execution of these instruments and the conduct of the claimant and the bankrupts relative thereto may be regarded as the cause for the litigation involved in this review. [394]

The claimant would have it appear that this extraordinary change in the relations between the bankrupts and himself resulted from the simple and innocent circumstances that in December, 1938 he told the bankrupts that he desired to leave their employ because of ill health and therefore he must be given security for the repayment of their indebtedness to him. The record, however, discloses other facts and circumstances which lend quite a different color to the events which ultimately took place.

At the time of the commencement of the within proceedings and for approximately one year prior

thereto, the bankrupts had become hopelessly insolvent. About the end of the year 1938 claimant's salary was reduced. For more than three years he had had considerable to do with the sale of merchandise at the bankrupts' Hill Street establishment, and it is reasonable to infer that by the end of the latter year he had become aware that the volume of merchandise being offered for sale had decreased to a rather serious extent.

Even according to claimant's own version, approximately two months had elapsed between the time when he first demanded security and the date when the negotiations were concluded, by the execution of the documents upon which he now relies as the basis for his contention that his claim should be allowed as a secured one. Doubtless virtually any kind of security would have been acceptable to him, just so the value had been adequate. Likewise, it would appear, so far as the record discloses, that the bankrupts did not indicate that they had any particular assets which they could use for the purpose of securing the indebtedness they owed him.

In fact, it was not the bankrupts, but the claimant, who suggested that pledges or pawned articles then held by the [395] former be given as such security. This the bankrupts refused to do, upon the ground that it was prohibited by the laws of California. Furthermore, one may justifiably infer that the claimant regarded the conditions then prevailing to be so alarming as to lead him to seek legal advice, and to bring an attorney (his son-in-law) from San



Francisco to represent him in the negotiations which ultimately led to the execution of said contract of February 24, 1939, and the other documents executed in connection therewith. Furthermore, it would appear that it was claimant's attorney who advised that the objection to the effect that California law, prohibiting a pawnbroker relinquishing articles pawned by him, could be overcome in a manner that would nevertheless place the claimant in control of such pawned articles.

Upon examining this contract of February 24, 1939, we find among its provisions several significant and important disclosures. For example, it is therein admitted that, out of a total of nearly \$100,000 then owing and past due to claimant, more than \$73,000 had been in default for over two years, also that a further indebtedness of \$19,000 had been past due for nearly a year, also that on so small an item as a note for \$2450, not only had the principal been delinquent since 1936, but there also remained unpaid interest thereon amounting to \$486.00, and that, in addition, on two other smaller items, namely, two notes totalling \$620.00, default in the payment of the principal had existed since 1936, and there was past due interest thereon in the sum of \$123.00.

Likewise, it appears that whereas prior to 1939 claimant had been willing to loan to the bankrupts various sums, ranging from \$100.00 to \$15,000 at a time upon their mere IOU's, this practice virtually came to a termination about [396] the time of the execution of the contract on February 24, 1939.



In the light of the facts and conditions hereinbefore outlined, the testimony given on behalf of claimant, whereby he sought to give a simple and innocent explanation for the abrupt and extraordinary change which he undertook to effectuate in his financial relations with the bankrupts—a change which apparently required negotiations extending over a period of a month or longer with the aid of legal counsel—indeed challenges one's credulity.

In the course of an opinion rendered in a case recently decided by the United States Supreme Court, Mr. Justice Frankfurter pointedly observed: "It is a commonplace in the administration of criminal justice that the actualities of a long trial are too often given a meretricious appearance on appeal; the perspective of a living trial is lost in the search for error in a dead record."

As previously noted the record upon this review is quite voluminous. It bears the earmarks of a long trial. The lengthy briefs and rather extended oral argument cause one to wonder whether or not "the perspective of the living trial" has been "lost in the search for error in a dead record."

We are persuaded that upon the issue of preference the record justifies the findings of the Referee. We further conclude that the contract of February 24, 1939, and those executed subsequently between the bankrupts and claimant, constitute voidable preferences. [397]

[Endorsed]: Filed Feb. 6, 1942. [401]

[Title of District Court and Cause.]

ORDER OF JUDGE ON PETITION FOR  
REVIEW OF REFEREE'S ORDER.

The petition for review of Sam Kleinman filed herein on the 13th day of February, 1941, came on for hearing before Honorable Harry A. Hollzer, Judge Presiding, on the 18th day of July, 1941, and having been concluded on the 22nd day of July, 1941, Messrs. Isaac Pacht, Eugene L. Wolver, Edward Dienstag, Louis Miller and Theodore A. Horn appearing as Attorneys for claimant, Sam Kleinman, and Frank C. Weller and Murray M. Chotiner appearing as Attorneys for Paul W. Sampsell, Trustee herein, and the Court having heard the arguments of counsel for the respective parties, and having considered the evidence and all of the proceedings had before the Referee and the authorities submitted by the respective counsel, and having filed herein its Memorandum of Conclusions dated February 6, 1942, and its Minute Order dated May 20, 1942, and it appearing to be the proper case for such an order;

It Is Hereby Ordered that each and all of the Referee's report, findings and conclusions in this matter be, and the same hereby are approved and adopted, except that portion thereof that finds and adjudges that said claimant received usurious interest, and that such excepted portion of the said report, findings and conclusions of the Referee is hereby rejected and set aside; and [403]

It Is Further Ordered, Adjudged and Decreed that the said claim of Sam Kleinman be, and the same is

100

hereby allowed as a general unsecured claim in the sum of \$109,545.73 and a prior labor claim in the sum of \$75.81, and that the claims of the trustee of set-offs for alleged usurious interest, are hereby disallowed; and

It Is Further Ordered that this matter be, and the same is hereby remanded to the Referee with instructions to modify his said Order in conformity herewith.

Dated: June 8, 1942.

H. A. HOLLZER

District Judge.

Approved as to Form:

ISAAC PACT, EUGENE L.  
WOLVER, EDWARD DIEN-  
STAG, LOUIS MILLER and  
THEODORE A. HORN

June 3/42.

By ISAAC PACT

Attorneys for Claimant.

[Endorsed]: Filed Jun. 8, 1942. [404]

---

[Title of District Court and Cause.]

### NOTICE OF ENTRY OF ORDER

To Claimant, Sam Kleinman, and

To Isaac Pact, Eugene L. Wolver, Edward  
Dienstag, et al., His Attorneys:

You, and each of you will please take notice that pursuant to the Minute Order entered by Judge Harry A. Hollzer in the above entitled matter on the

20th day of May, 1942, the said Court signed and filed an Order entitled: "Order of Judge on Petition for Review of Referee's Order" under date of June 8, 1942.

Dated June 16, 1942.

FRANK C. WELLER  
MURRAY M. CHOTINER

Attorneys for Trustee.

Back cover:

Service of the within Notice of Entry of Order is hereby admitted this 18th day of June, 1942.

EDWARD DIENSTAG, et al.,  
By ISAAC PACHT  
Attorneys for Sam Kleinman.

[Endorsed]: Filed Jun. 19, 1942. [405]

---

[Title of District Court and Cause.]

### NOTICE OF APPEAL

To the Above Entitled Court and to the Clerk Thereof and to Paul W. Sampsell, Trustee in Bankruptcy in the Above Captioned Matter:

Notice Is Hereby Given that Sam Kleinman, Claimant in the above entitled case, hereby appeals to the Circuit Court of Appeals, for the Ninth Circuit, from the whole of the Order of this Court made and entered June 8, 1942, excepting that portion of said Order which rejects and sets aside the report, findings and conclusions of the referee, that said Claimant received usurious interest.



That the amount involved in this appeal and the value of the property affected by the Orders of the said Referee and said District Court, and each of them, is more than Five Hundred (\$500.00) Dollars.

Dated: July 8, 1942.

EDWARD DIENSTAG, THEO-  
DORE A. HORN and LOUIS  
MILLER

By EDWARD DIENSTAG [406]

Attorneys for Claimant and Appellant. Address:  
110 Sutter Street, San Francisco, Calif.

Names and addresses of the Attorneys for the  
Appellee,

Paul W. Sampsell,

Trustee of the Estate of the above named  
bankrupts are:

Frank C. Weller

817 Board of Trade Building

111 West 7th

Los Angeles, California.

Murray M. Chotiner

508 James Oviatt Building

617 South Olive

Los Angeles, California

[Endorsed]: Filed Jul. 8, 1942. [407]

[Title of District Court and Cause.]

STATEMENT OF POINTS UPON WHICH APPELLANT INTENDS TO RELY ON APPEAL, PURSUANT TO RULE 75d, FEDERAL RULES OF CIVIL PROCEDURE.

Now Comes Sam Kleinman, Claimant in the above entitled matter, appellant herein, and pursuant to Rule 75d of the Federal Rules of Civil Procedure, sets forth the statement of the points upon which appellant intends to rely on appeal as follows:

(1) That the evidence does not support that portion of the Order and Decree of the District Court, dated and filed June 8, 1942, which adjudges the claim of the claimant and appellant herein to be an unsecured claim.

(2) That the District Court erred in making that portion of its Order, dated June 8, 1942, adopting and approving the following Findings of Fact of the Referee, for the reason that the same are against the law and not supported by the evidence:

(a) That on February 24, 1939, and for some time prior thereto, and continuously thereafter, Sam Kleinman had reasonable cause to believe, and did know, that the bankrupts, as co-partners, and as individuals, were insolvent.

(b) The pledge agreements, pledge property and pawn tickets remained in the possession and under the control of the bankrupts. [409]

(c) That the money received from the customer would be placed in the cash drawer and

used again in the business of the bankrupts, without segregating it in any manner.

(d) The moneys received as a result of the redemption of pledges by customers became a part of the general funds of the bankrupts, and that Sam Kleinman had full knowledge of this procedure and acquiesced to it.

(e) There never was a transfer of the pawn tickets or pledges, and that all of the property and assets at all times remained in the exclusive possession and control of the bankrupts, and that Sam Kleinman did not exercise any dominion or control over the pledges or the pledge ticket stubs, except as an employee of the bankrupts.

(f) That the bankrupts at all times had exclusive dominion and control of the pledge ticket stubs and pledges, and that there was not any difference in the handling of the pledges or pledge tickets after they were assigned to Sam Kleinman for security than there was before that time.

(g) That the transfer of the pledges and pledge ticket stubs from the bankrupts to Sam Kleinman was a fiction, and that no actual transfer ever took place.

(h) That the transaction between the bankrupts and Sam Kleinman was an attempt to give Sam Kleinman a more favorable position over other creditors.

(i) That the checks executed by Sam Kleinman's daughter, Jeanette Dienstag, and deliv-

ered to the Bankrupts in respect to new notes and contracts, was a [410] subterfuge, as the sums of money indicated were not actually paid to the bankrupts.

(j) That the claimant knew that in 1936 and 1937 there was sufficient money to make loans, and that after that time he knew there was not sufficient money to make all loans requested by customers; and that he also knew that many large loans were refused because the bankrupts were short of capital.

(k) That a duplicate set of pawn ticket stubs were not segregated from the rest of the records of the bankrupts.

(3) That the District Court erred in approving and adopting the following Conclusion of Law of the Referee:

That the assignment of pledge tickets and pledges from the bankrupts to Sam Kleinman was void as against creditors of the bankrupts and as against the Trustee in bankruptcy.

(4) That portion of The Order of The Judge on Petition for Review of Referee's Order dated June 8, 1942, which adjudges and decrees that the claim of Sam Kleinman is a general unsecured claim and not a secured claim, is contrary to the law and is not supported by the evidence.

(5) That the District Court erred in making its order adjudging and decreeing that the said claim of Sam Kleinman is a general unsecured claim (rather than a secured claim).



(6) That the District Court erred in failing to find that the claim of Sam Kleinman was a secured claim in the sum of \$108,350.00, plus interest accrued at the date of the proof of claim, i. e., the 14th day of February, 1940, together with interest at the rate of 10% from and after said 14th day of February, 1940. [411]

(7) That the District Court erred in failing to find that the claimant was entitled to reasonable Attorneys' fees in this matter by virtue of his security agreement.

(8) That the District Court erred in failing to find that the claimant was a general unsecured creditor in the sum of \$574.19.

Dated: July 8, 1942.

EDWARD DIENSTAG, THEO-  
DORE A. HORN and LOUIS  
MILLER.

By EDWARD DIENSTAG,

Attorney for Sam Kleinman,  
Claimant and Appellant.

Receipt of a copy of the within Statement of Points is hereby admitted this ..... day of July, 1942.

-----  
-----  
Attorneys for Paul W. Samp-  
sell, Trustee in Bankruptcy  
and Appellee.

[Endorsed]: Filed Jul. 8, 1942. [412]

[Title of District Court and Cause.]

DESIGNATION BY APPELLANT OF CON-  
TENTS OF RECORD ON APPEAL

To the Clerk of the Above Entitled Court:

Sam Kleinman, the Claimant in the above entitled matter, respectfully requests that the following portions of the record, proceedings and evidence be included and contained in the record on appeal, to-wit:

1. Reporter's Transcript of Testimony and Proceedings Adduced at Hearing of Objections by Trustee to Claim of Sam Kleinman, Volumes I, II and III.

2. Notice of Entry of Order, dated June 16th, 1942.

3. Order of Judge on Petition for Review of Referee's Order, dated June 8th, 1942.

4. Minute Order, Judge Hollzer's Calendar, May 20th, 1942.

5. Minute Order, Judge Hollzer's Calendar, February 6th, 1942.

6. Memorandum of Conclusions, Judge Hollzer, February 6th, 1942.

7. Referee's Certificate on Petition for Review by Sam Kleinman, dated February 27th, 1941.

8. Petition for Review of Referee's Order, filed by the Claimant in the above entitled Court February 13th, 1941. [417]

9. Order and Decree of the Referee in Bankruptcy, dated January 17th, 1941, made after the hearing of the Trustee's Objections to the Claim of Sam Kleinman.

10. Findings of Fact and Conclusions of Law of the Referee in Bankruptcy, dated January 17th, 1941 and made upon determination of the hearing of the Trustee's Objections to the Claim of Sam Kleinman.

11. Trustee's Objections to the Claim of Sam Kleinman, Objections to Right of Security thereunder and Set-offs to said Claim, dated May 23rd, 1940.

12. Proof of Claim of Sam Kleinman, filed in the above entitled matter before the Referee in Bankruptcy on February 16th, 1940.

13. Trustee's Exhibit Number 4, Agreement dated February 24th, 1939.

14. Trustee's Exhibit Number 5, Contract dated March 2nd, 1939.

15. Trustee's Exhibit Number 6, Contract dated March 22nd, 1939.

16. Kleinman's Exhibit Number 1, Pawn Ticket.

17. Kleinman's Exhibit Number 3, Memorandum of Redemptions.

18. Kleinman's Exhibit Number 4, Copy of Contract of February 24th, 1939.

19. Kleinman's Exhibit Number 5, Ledger Sheet.

20. Kleinman's Exhibit Number 6, Book of Pledges.

21. Kleinman's Exhibit Number 7, Inventory Sheet.

22. Kleinman's Exhibit Number 8, Five pages of Pledge Numbers.

23. Reporter's Transcript of Excerpts from Proceedings on Hearing Arguments on Certificate on

Petition of Sam Kleinman for Review of Referee's Order of January 17th, 1941 [418] and dated July 18th, 1941, consisting of pages numbered 1 to 12, inclusive, on file in this action.

24. Reporter's Transcript of Excerpts from Proceedings on Argument on Petition of Sam Kleinman for Review of Referee's Order of January 17th, 1941 and dated July 21st, 1941, consisting of pages numbered 1 to 23, inclusive, on file in this action.

25. Notice of Appeal.

26. Statement of Points upon which Appellant intends to rely on appeal.

27. This designation of Contents of Record on Appeal.

Dated July 8, 1942.

EDWARD DIENSTAG,  
THEODORE A. HORN and  
LOUIS MILLER.

By EDWARD DIENSTAG,

Attorneys for Sam Kleinman,  
Claimant.

Address: 110 Sutter Street,  
San Francisco, California.

Received copy of the within Designation by Appellant of Contents of Record on Appeal and service is hereby admitted this ..... day of July, 1942.

-----  
-----  
Attorneys for Trustee.

[Endorsed]: Filed Jul. 8, 1942. [419]



[Title of District Court and Cause.]

SUPPLEMENTAL DESIGNATION BY AP-  
PELLANT OF CONTENTS OF RECORD  
ON APPEAL.

To the Clerk of the Above Entitled Court:

Sam Kleinman, the Claimant in the above entitled matter, respectfully requests that the following portions of the record, proceedings and evidence be included and contained in the record on appeal, in addition to the portions of the said record and proceedings heretofore designated by the claimant, to-wit:

A. The Petition in Bankruptcy of the above named bankrupts (not including the schedules).

B. Adjudication of bankruptcy of the above named bankrupts.

C. This Supplemental Designation of Contents of Record on Appeal.

Dated: July 17, 1942.

EDWARD DIENSTAG,  
THEODORE A. HORN and  
LOUIS MILLER,

By EDWARD DIENSTAG,

Attorneys for Sam Kleinman,  
Claimant.

Address 110 Sutter Street,  
San Francisco, California.

Copy mailed to attorneys for appellee Jul. 17,  
1942.

[Endorsed]: Filed Jul. 18, 1942. [420]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 422, inclusive, contain full, true and correct copies of Petition for Arrangements under Chapter Eleven of the Federal Bankruptcy Act; Adjudication of Bankruptcy; Stipulation filed Aug. 12, 1942; Order filed Aug. 12, 1942; Proof of Claim of Sam Kleinman and Notes and Agreements attached thereto; Objections to Claim of Sam Kleinman, objections to right of security thereunder and set-offs to said claim; Findings of Fact and Conclusions of Law; Order and Decree; Petition for Review of Referee's Order; Referee's Certificate on Petition for Review by Sam Kleinman; Trustee's Exhibit No. 4; Kleinman's Exhibit No. 4; Minute Order of February 6, 1942; Memorandum of Conclusions of February 6, 1942; Minute Order of May 20, 1942; Order of Judge on Petition for Review of Referee's Order; Notice of Entry of Order; Notice of Appeal; Stay Order; Statement of Points upon which Appellant Intends to Rely on Appeal; Cost Bond on Appeal; Stipulation and Order re Original Exhibits; Designation by Appellant of Contents of Record on Appeal; and Supplemental Designation by Appellant of Contents of Record on Appeal, which, together with the Original Kleinman's Exhibits 1, 3, 5, 6, 7 and 8, the Original Reporter's Transcripts

of Excerpts on Hearings on July 18, 1941 and July 21, 1941 and three volumes of copies of Reporter's Transcript of Testimony and Proceedings adduced at Hearing of Objections by Trustee to Claim of Sam Kleinman transmitted herewith constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I do further certify that the fees of the clerk for comparing, correcting and certifying the foregoing record amount to \$77.25 which amount has been paid to me by appellant.

Witness my hand and the seal of the said District Court this 31 day of August, A. D. 1942.

[Seal]

EDMUND L. SMITH,

Clerk.

By THEODORE HOCKE,

Deputy Clerk.

[Title of District Court and Cause.]

REPORTER'S TRANSCRIPT OF TESTIMONY  
AND PROCEEDINGS ADDUCED AT  
HEARING OF OBJECTIONS BY TRUS-  
TEE TO CLAIM OF SAM KLEINMAN

Appearances:

For the Trustee:

Frank C. Weller, Esq.,  
Hubert F. Laugharn, Esq., and  
Murray M. Chotiner, Esq.

For the Claimant:

Edward B. Dienstag, Esq.,  
Eugène L. Wolver, Esq.,  
Theodore A. Horn, Esq., and  
Louis Miller, Esq.

Los Angeles, California

August 21st, 22nd, 23rd, 26th, 27th and 28th, 1940.

[1\*]

TESTIMONY

The Referee: Is there any dispute on the part of the Trustee that, as to the amount which is here claimed—what is it that is claimed? It is claimed \$127,501.61. Is that amount disputed?

Mr. Chotiner: We are starting with their claim, your Honor, as to the amount claimed by them; in other words, we are not contending that the principal amounts set forth in their claim were never loaned or advanced to Zemansky [18] Broth-

---

\*Page numbering appearing at top of page of original Reporter's Transcript.



ers; so we are starting with that figure. There is no dispute as to the figures set forth as claimed by them in these various agreements that are attached to and made a part of their claim. [19]

The Referee: Now, then, the Trustee claims that after February 24, 1939, the claimant paid to Zemanskys the amount listed at the top of page 9, totaling \$74,130; is that correct?

Mr. Wolver: Those are the amounts that were paid to Kleinman.

Mr. Laugharn: This is the way to put it, I think. That the \$100,000 transaction was again reformed, that is, subsequent thereto, and on the date set forth the bankrupt and the said Sam Kleinman entered into a series of agreements [44] bearing dates as set forth hereinafter. Now, copies of those agreements, I think, are all attached to the claim. All the said agreements being in the same form and terms, which said agreements were intended to be evidence of a portion of the said \$100,000 obligation (20 \$5,000 notes). Now, the total of those figures of substitution is \$74,130. Now, that left out of the \$100,000, of course \$25,870, upon which there was no substitution. Those two figures make the \$100,000. [45]

Mr. Laugharn: Our contention is this, that on February 24, 1939, there was \$100,000 owed by Zemansky Brothers to Sam Kleinman. That is conceded by counsel for Sam Kleinman. Then subsequent to February 24, 1939, new notes and new agreements, as set forth in the schedule, totaling

\$74,130 were substituted, as we term it, and counsel for Sam Kleinman claim Zemansky was entitled to a credit, although it was not a payment by cash; that those agreements and notes totaling \$74,130 were substituted in place of a series of various \$5,000 notes which had been executed on February 24, 1939. [48]

---

R. D. HOLDREGE

resumes the witness stand.

Mr. Laugharn: There are two matters we would like to bring out as a correction or an amendment to the Trustee's position as put forward before the Court this morning. The items are concerned in the \$5,950 account.

The Referee: Yes.

Mr. Laugharn: Set up in paragraph 7, page 12.

Q. I will ask you, during the noon hour, did you talk to Mr. Young and also go over the record?

A. Yes sir.

Q. And what have you found in connection with this item of \$5,950?

A. Payments were made apparently by Mr. Kleinman.

Q. I want to make sure that you have the thing in mind that I am referring to first. You said there were in the claim three amounts that you could not find any evidence of on the books?

A. That is right.

Q. But you did find evidence of all of the others [60] except those you enumerated?

(Testimony of R. D. Holdrege.)

A. No, those others were not on the books. They were merely new notes that were given.

Q. There are three of them you said you did not find any record of? A. Yes.

Q. During the noon hour you have looked at the books, haven't you? A. Yes sir.

Q. Did you find any record of any of those items? A. Two of them.

Q. Which two?

A. The item of, I think the loan is dated May 2nd, but it does not appear in the cash book until May 8th, \$1200.

Q. You are referring to an entry in the cash book?

A. Yes; this cash book of May 8, 1939. It shows \$1200, Sam Kleinman.

Q. That book you refer to as the cash book is the book in which the receipts of money was entered? A. Or debited.

Q. That is a debit? A. That is a debit.

Q. Of \$1200? A. That is correct.

Q. That is the item that you stated this morning you [61] had no record of being received by the Zemanskys? A. That is correct.

Q. Now, what other items?

A. On May 13th, there is \$1,000 that was received from Sam Kleinman.

Q. That is in the same book, is it?

A. Yes sir. Now, the only other item which I haven't found in the book——

(Testimony of R. D. Holdrege.)

Q. That leaves one item out of those three that made up the \$5,950? A. That is correct.

Q. Does it not? A. Yes sir.

Q. What is that item you haven't been able to find? A. \$3,750, I believe, on June 2nd. [62]

---

SOL ZEMANSKY

having been first duly sworn, testified as follows:

The Referee: You are Sol Zemansky?

The Witness: That is right

The Referee: Proceed.

Direct Examination

By Mr. Chotiner:

Q. You are one of the bankrupts in this matter, is that correct? A. I am. [67]

Mr. Chotiner: Mr. Zemansky, directing your attention to 1933, did Zemansky Brothers borrow any money from Sam Kleinman?

A. I believe in that period of time we had borrowed some money from him. I am not certain as to the date. [68]

Q. By Mr. Chotiner: Do you know what rate of interest was paid to Mr. Kleinman on the money that he loaned to Zemansky Brothers?

A. I believe it was 12 per cent.

Q. By Mr. Chotiner: Did Mr. Sam Kleinman ever become [69] an employee of the Provident Loan Association?



(Testimony of Sol Zemansky.)

A. Yes, he was an employee.

Q. When was it that he first became employed by the Provident Loan Association, approximately?

A. I think it was around 1935.

Q. What were his duties when he first became an employee?

A. He was to dispose of the merchandise.

Q. You say he was to dispose of the merchandise. Will you tell the Court just what that entailed?

A. That entailed the disposition of the expired pledges, which were turned over to him, and he was employed to sell them.

Q. What was done with the proceeds, that money?

A. It was turned over to the Provident.

Q. To the Provident. What salary did you pay Mr. Kleinman when he was employed by you?

A. \$75 a week, and then he received one per cent on each sale.

Q. During the time that he was employed, did he have any other duties besides selling jewelry that was received as the result of any unredeemed purchase?

A. Originally he did not, but later on he used to assist in the loan department.

Q. When was it that he started to assist in the loan department? [70]

A. Well, I should judge sometime around about 1937, 1936 or '37.

(Testimony of Sol Zemansky.)

Q. Was there any reason as to why he started to assist in the loan department at that time?

A. No particular reason.

Q. Well, was he busily engaged full time in disposing of merchandise?

A. No, he was not fully engaged.

Q. Then, as a matter of fact, Mr. Zemansky, is this true, that he started to assist in the loan department when the disposition of jewelry as a result of unredeemed purchases became rather slack so that was not taking up enough of his time; is that correct?

Mr. Wolver: That is objected to as being leading and suggestive, and assuming facts not in evidence.

The Referee: Overruled.

Q. By Mr. Chotiner: Is that true?

A. Yes.

Q. Now, during 1938 and 1939, was Mr. Kleinman's time devoted mostly to the disposition of jewelry or acting as a loan clerk?

Mr. Wolver: That is objected to, your Honor, he said he assisted in the loan department, and now we have him as a loan clerk.

The Referee: Overruled.

The Witness: What was the question? [71]

(Question read.)

A. It was equally divided.

Q. By Mr. Chotiner: In 1938 and 1939?

A. Yes. [72]

(Testimony of Sol Zemansky.)

Q. And Mr. Kleinman, when he would be busy in making loans there, and acting as a loan clerk, would appraise the jewelry and then go to the cash drawer for the purpose of withdrawing sufficient money in order to make the loan, is that correct?

A. Yes sir.

Q. And were there occasions when there was not sufficient money in the cash drawer to make the loan? A. Yes. [73]

Q. By Mr. Chotiner: Directing your attention to the latter part of 1938 or the 1st of January, 1939, was there any discussion between you and Mr. Kleinman regarding Mr. Kleinman terminating his association with the Provident Loan Association?

A. I believe at one time during that period that he said he wanted to leave. I asked him why and he said——

Q. Was there a conversation in regard to that subject?

A. He said he wanted to go away and rest up, take sort of a vacation for a while. [74]

Q. Did he ask for his money at that time?

A. I believe he said he wanted, if I remember the conversation, he wanted to leave and he desired to have his money secured while he was away.

Q. Did he ask for his money, for payment?

A. I don't recall that.

Q. Mr. Kleinman was up at the Provident Loan Association every day, wasn't he?

(Testimony of Sol Zemansky.)

A. Yes. [75]

A. He said he wanted to leave and he did ask something about his money, but I don't know whether he asked for it, I know it was a conversation about money.

Q. In other words, he did ask for some of the money, is that correct? A. Yes.

Q. What did you tell him then?

A. I told him I was unable to give it to him at the time.

Mr. Wolver: The witness says, "I don't recall the conversation," and counsel follows it with a question which I submit to the Court is an improper question, "He did then ask for some of his money," which question assumes a fact which the witness has not testified to, and by a leading question he elicits the answer "Yes."

The Referee: Overruled. Proceed.

Q. This is at the time when you said, around the first of 1939, or the end of 1938, that there was a discussion regarding Mr. Kleinman leaving the Provident Loan [76] Association.

A. I believe at that time is when he asked if I would secure him for the loan.

Q. When was it that he asked you, if he ever did, for payment of any part of the money that was owing to him?

A. About that same period.

Q. That was the time that this conversation took place which you just related here, is that correct?



(Testimony of Sol Zemansky.)

A. Yes.

Q. What did Mr. Kleinman say to you, if anything, after you told him you could not pay him any money?

A. I believe that was the time he mentioned giving him the loans.

Q. About giving him what? A. The loans.

Q. What do you mean by saying "about giving him the loans"?

A. Turning the loans over to him for the amount of money that we owed him.

Q. By "the loans," you mean loans that had been made to customers who had come into the place, is that right? A. That is correct. [77]

Q. During the several conversations, in which the subject matter was discussed, did Mr. Kleinman also discuss with you the matter of his receiving any payment on account of the obligation?

A. No, I don't believe there was.

Q. Had you discussed with Mr. Kleinman the matter of the money that was owing to the Simons' Lunch Room and Robert J. Gans at any time? [78]

A. I can't recall.

Q. Mr. Zemansky, did you ever talk over your financial condition with Mr. Kleinman, regarding the money that was owing to various creditors?

A. No, I don't believe I did.

Q. Was the subject of the Simons' Lunch Room and the Robert J. Gans matter ever discussed with Mr. Kleinman prior to your giving him the security? A. I can't recall.

(Testimony of Sol Zemansky.)

Q. As a matter of fact, didn't you send Mr. Kleinman over to talk with the Simons people or Robert Gans regarding their accounts?

A. That was after our transaction with Mr. Kleinman.

Q. That was after the security transaction, is that correct?      A. That is right.

Q. Was there ever any discussion with Mr. Kleinman prior to the security transaction as to the amount of money that was owing by you?

A. I don't recall.

Q. Well, Mr. Kleinman knew that the Provident Loan Association was short of money insofar as making loans was concerned, didn't he?

Mr. Wolver: That is objected to as calling for the conclusion of the witness.

The Referee: Overruled. [79]

A. Being in the loan department, he had access to the cash drawer and he would know whether we were short of money or not.

Q. Prior to the giving of the security, you had asked Mr. Kleinman to borrow some money at the Union Bank & Trust Company so that you would have sufficient funds with which to make loans, isn't that correct?

Mr. Wolver: That is objected to as leading and suggestive.

The Referee: I am afraid that that one has to be sustained.

Q. By Mr. Chotiner: Mr. Zemansky, did you

(Testimony of Sol Zemansky.)

ever have any conversation with Mr. Kleinman relative to this borrowing of money elsewhere to be used in the business?      A. Yes.

Q. Was that before or after the security was given?      A. Before and after, both.

Q. Directing your attention to the time before the security was given, what conversation did you have with Mr. Kleinman regarding that subject?

A. Mr. Kleinman told me he thought he would be able to procure some money for us at the Union Bank, I believe.

Q. Did you say anything at all to Mr. Kleinman regarding that subject before he made that statement to you?      A. I didn't get that question.

Q. Did you say anything at all to Mr. Kleinman regarding that subject matter before Mr. Kleinman made the [80] statement that you have just related?      A. No, I don't recall.

Q. Then Mr. Kleinman volunteered the statement or first saying to you "I believe I can get some money at the Union Bank"?      A. That is right.

Q. What did you say?

A. I told him I thought we would be able to use it.

Q. Tell us the rest of the conversation that was held with Mr. Kleinman regarding that subject matter; relate it.

A. He said if his loan was secured, he thought it would enable him to procure more credit at the Union Bank.

(Testimony of Sol Zemansky.)

Q. Was that conversation held before the security was given?

A. I believe it was before. [81]

Q. Will you describe to the Court where the loans or the pledges were kept at the Provident Loan Association?

A. They were kept in individual locked steel drawers.

Q. By Mr. Chotiner: After the security had been given to Mr. Kleinman, what was the method of operation of the business there whenever a customer would wish to redeem a pledge that was made there and it happened to be one of the pledges that was given to Mr. Kleinman as security?

A. The transaction was, a customer had——

Q. Mr. Zemansky, may I offer this suggestion to you. Let's proceed on the theory that his Honor was never in the Provident Loan Association and you are now explaining to [85] him, giving him a picture of just exactly how it happens from a time a customer would come in until the customer would leave.

A. You mean at the time of redemption of a pledge?

Q. At the time of redemption.

A. A customer would come in and present his ticket, and we would obtain the signature and compare it with the one on the stub, and when compared we would tell the customer what was due, and would go to the vault and take the loan out and



(Testimony of Sol Zemansky.)

deliver it to the customer, taking the money from the customer and putting the money in the cash drawer.

Q. And in redeeming a pledge that had been given to Mr. Kleinman as security, would you follow that same procedure?

A. The same procedure.

Q. Did you take that money, in a case of a pledge that had been given to Mr. Kleinman as security, and keep it separate from the rest of the funds of the Provident Loan Association?

A. No, it went in the usual cash drawer.

Q. What was done with the money after it went into the regular cash drawer?

A. It was used the same as all other cash.

Q. I take it that new loans were made with it, with that same money, is that correct? [86]

A. That is correct.

Q. Was that procedure ever changed at any time after Mr. Kleinman had been given security insofar as those pledges were concerned?

A. So far as I know, I don't think that procedure was ever changed.

Q. Now, was a list of those redemptions ever furnished to Mr. Kleinman? A. Yes.

Q. And who would furnish that list to him?

A. I think the bookkeeper at the Provident kept track of those, and Mr. Kleinman, together jointly.

Q. Then what would be done after the list had been given to him?

(Testimony of Sol Zemansky.)

A. After a certain amount of money would be run up that way, I think Mr. Kleinman would give my brother, Abe Zemansky, a check, and he used to walk down to the Union Bank and cash the check and apply it as—get the money in currency and turn it over to Mr. Kleinman, and then apply it as on the note. I think that was the mechanics of the thing. They would proceed to take new loans for the ones that had been redeemed, approximately.

Q. Mr. Zemansky, I will show you now a document entitled “Agreement,” dated the 24th of February, 1939, and ask you to inspect it and will ask you to tell me what that represents. [87]

A. That is an agreement——

Mr. Chotiner: Perhaps I can save time. May it be stipulated that, counsel, that this document dated February 24, 1939, was executed by the three Zemansky Brothers and Sam Kleinman, and relates to the transferring of pledges to Mr. Kleinman as security.

Mr. Wolver: I think this can be compared.

Mr. Chotiner: With that understanding, we offer this as Trustee’s Exhibit next in order, in evidence.

The Referee: Trustee’s Exhibit No. 4. Are you offering this also?

Mr. Chotiner: Yes, that receipt should be a part of it.

The Referee: Part of the exhibit.

(Testimony of Sol Zemansky.)

Mr. Chotiner: Yes.

The Referee: It will be attached and marked Exhibit 4.

---

## TRUSTEE'S EXHIBIT No. 4

### AGREEMENT

This Agreement, made this 24th day of February, 1939, by and between Sol Zemansky, Dave Zemansky, and Abe Zemansky, doing business under the fictitious firm names and styles of Zemansky Brothers, and the Provident Loan Association, and the State Loan Office, hereinafter referred to as "first parties," and Sam Kleinman, hereinafter referred to as "second party".

Witnesseth:

Whereas: The second party has heretofore loaned to the first parties the sum of Ninety Five Thousand Seven Hundred (\$95,700.00) Dollars, which is evidenced by fifteen (15) promissory notes, made and executed and delivered to the second party by the first parties, which are valid, subsisting, and in full force and effect, and which are now due and payable, which said notes are in the following sums and were executed on the following dates:

(Testimony of Sol Zemansky.)

## Trustee's Exhibit No. 4 (Continued)

Note	Date	Due
\$20,000.00	Nov. 14, 1936	Dec. 14, 1939
19,000.00	Mar. 25, 1938	Mar. 26, 1938
3,000.00	July 26, 1938	July 26, 1938
2,000.00	July 26, 1938	Aug. 25, 1938
5,000.00	July 1, 1936	July 2, 1936
5,000.00	July 1, 1936	July 2, 1936
5,000.00	July 1, 1936	July 2, 1936
5,000.00	July 1, 1936	July 2, 1936
5,000.00	July 1, 1936	July 2, 1936
5,000.00	July 1, 1936	July 2, 1936
5,000.00	July 1, 1936	July 2, 1936
5,000.00	July 1, 1936	July 2, 1936
5,000.00	July 1, 1936	July 2, 1936
5,000.00	July 1, 1936	July 2, 1936
1,700.00	Dec. 17, 1938	Dec. 18, 1938

and

Whereas: Second party has heretofore loaned to Sol Zemansky the sum of Two Thousand Four Hundred Fifty (\$2,450.00) Dollars, evidenced by a promissory note in the sum of Two Thousand Four Hundred Fifty (\$2,450.00) Dollars, made, executed and delivered to the second party by Sol Zemansky on the 7th day of April, 1936, which is now valid, subsisting and in full force and effect, and which is now due and payable, and

Whereas: Second party loaned to one Max Golob the sum of Six Hundred Twenty (\$620.00) Dollars, evidenced by two (2) promissory notes in the sum of Three Hundred Ten (\$310.00) Dollars each, made, executed and delivered to second party by the said Max Golob on the 1st day of May, 1936, and due on the 1st day of August 1936 and on the 1st



(Testimony of Sol Zemansky.)

Trustee's Exhibit No. 4 (Continued)

day of October 1936, and which notes were endorsed and guaranteed by Sol Zemansky, and

Whereas: The interest payments due on the said note made by Sol Zemansky has not been paid to date and now amounts to the sum of Four Hundred Eighty Six (\$486.00) Dollars, and

Whereas: The interest payments due on the notes executed by the said Max Golob have not been paid to date and equal the sum of One Hundred Twenty-three (\$123.00) Dollars, and

Whereas: The parties hereto are desirous of having each of said notes cancelled and replaced respectively by twenty (20) new notes in the sum of Five Thousand (\$5,000.00) Dollars each, to be made, executed and delivered by first parties to second party in the manner and form of the note attached hereto and made a part hereof, and

Whereas: The parties hereto are desirous of having said promissory notes secured by way of pledge, and

Whereas: First parties are now engaged in the business of pawn-broking, and have in their possession pawn tickets executed by lenders of money from first parties, each ticket being distinguished by a certain serial number and being entitled Provident Loan Association, and

Whereas: First parties are desirous of pledging said pawn tickets to second party as security for payment of the said twenty (20) promissory notes.

(Testimony of Sol Zemansky.)

Trustee's Exhibit No. 4 (Continued)

Now, Therefore, It Is Hereby Mutually Agreed by and Between the Parties Hereto, as Follows, To-Wit:

First: That all of the notes heretofore made, executed, and delivered by first parties, Sol Zemansky and Max Golob to second party, shall be cancelled by second party and in consideration thereof, first parties do hereby agree to make, execute, and deliver to second party twenty (20) promissory notes, in words and figures as set forth in the promissory note hereto attached and made a part hereof.

Second: First parties do hereby agree to transfer and deposit, by way of pledge with said second party as collateral security for the payment of said twenty (20) promissory notes, together with all interest, costs, expenses, and fees that may accrue thereon, the pledge agreements and pawn tickets, the numbers of which are contained in Exhibit A attached hereto and made a part hereof, which are now in the possession of the first parties.

Third: In case of the non-payment of the said promissory notes, or the interest thereon, when due, according to the tenor thereof, first parties do hereby appoint and constitute second party, his heirs or assigns, their attorney irrevocable, with power of substitution to sell, without advertising, at any time after any of said notes or interest thereon become due, with or without notice or demand, at the option of said second party, the whole or any part of said security, either at public or private

(Testimony of Sol Zemansky.)

Trustee's Exhibit No. 4 (Continued)

sale, at his discretion; and to deliver the same to the purchaser or purchasers; and the proceeds to be applied to the payment of said promissory notes or note, interest due, attorney's fees, and other expenses accruing thereupon, and any surplus after payment of said note, interest, and expenses to be paid to first parties. And first parties do hereby agree to pay on demand to said second party, his heirs or assigns, whatever deficit may result after applying the net proceeds of such sale to payment of said principal, expenses, and attorney's fees. Should any such sale be made, second party, or his assigns, directly or in the name of any other person, shall have the right to purchase.

Fourth: Second party does hereby appoint first parties his agent and first parties do hereby agree to act as agent for second party, without charge to second party, for the purpose of collecting any and all sums of money which may be due, owing, or unpaid upon and in respect to each of the said pawn tickets, and pledge agreements, and first parties do hereby agree to collect such moneys and hold the same in trust for the purpose of applying such money so collected to the payment of the twenty (20) promissory notes hereinbefore described, and first parties will, upon demand, so pay *the* apply said moneys to the payment of the said promissory notes.

Fifth: First parties do hereby waive the pro-



(Testimony of Sol Zemansky.)

Trustee's Exhibit No. 4 (Continued)

visions of Sections 3001 and 3006 of the Civil Code of the State of California.

Sixth: In case suit or action be brought by second party to enforce the terms and provisions of this agreement or of any of said notes executed by first parties, or in the event of a sale of the personal property herein pledged by first parties, first parties agree to pay reasonable attorney's fees incurred by second party in such suit, action, or sale.

Seventh: First parties do hereby agree to retain in their possession every article pledged and pawned to them in respect to and by virtue of the foregoing pawn tickets, and to deliver them to the owners thereof, or assignees of said owners, only upon redemption of said pawn tickets by the payment of the same as provided in Section 3 of Statutes of California, 1935, Page 1613; and after the expiration of time limited by the terms of said Paragraph 3 of said Act, first parties shall hold any such articles so pledged and pawned for the benefit of and to the order of second party.

Eighth: First party shall keep true and accurate books, records, and accounts respecting the articles pledged and pawned and collection of the moneys due upon the above-described pawn tickets, and all such books, records, and accounts shall be open to inspection by second party at all reasonable times.

Ninth: Neither this agreement nor any of the terms, provisions, nor covenants herein are deemed



(Testimony of Sol Zemansky.)

Trustee's Exhibit No. 4 (Continued)

to nor shall the same be construed to mean that second party is a partner or joint adventurer with first parties, but that the meaning and intent of this agreement is that second party is a lender, creditor and pledgor of first parties.

Tenth: The benefits and burdens of this agreement shall run, *inrue* to and bind each of the parties hereto, his heirs, administrators and assigns.

In Witness Whereof, the parties hereto have hereunto set their hands and seals, on the date first herein mentioned.

SOL ZEMANSKY

DAVE ZEMANSKY

ABE ZEMANSKY

First Parties

S. KLEINMAN

Second Party.

(Copy)

\$5000.00.

February 24, 1939.

5 days after date, without grace, we promise to pay to the order of S. Kleinman Five Thousand and no/100 (\$5000.00) Dollars, For Value received, with interest from date at the rate of 10 per cent per annum until paid. Principal and interest payable in Lawful Money of the United States at Los Angeles, California, and in case suit is instituted to collect this note or any portion thereof, we promise

(Testimony of Sol Zemansky.)

Trustee's Exhibit No. 4 (Continued)

to pay such additional sum as the Court may adjudge reasonable as Attorney's fees in said suit.

ZEMANSKY BROS.

PROVIDENT LOAN ASSN.

&

STATE LOAN OFFICE

No. . . . . Due March 1939.

---

EXHIBIT A

No.	Amount
1184.....	\$ 65.00
1700.....	60.
2910.....	85.
3039.....	65.
3211.....	150.
3335.....	100.
3901.....	60.
4103.....	50.
4150.....	75.
5582.....	75.
5834.....	100.
5887.....	80.
5918.....	145.
6071.....	120.
6345.....	110.
6346.....	100.
6373.....	100.
6428.....	65.
6714.....	100.
6718.....	120.
6798.....	50.
6844.....	35.
6945.....	160.
7017.....	55.

No.	Amount
7042.....	\$125.00
7062.....	150.
7089.....	80.
7140.....	100.
7223.....	60.
7494.....	125.
7557.....	148.
7702.....	70.
7982.....	50.
8001.....	40.
8248.....	35.
8278.....	50.
8362.....	55.
8563.....	40.
8717.....	110.
8889.....	100.
8941.....	75.
8972.....	75.
8973.....	75.
9185.....	120.
9769.....	85.
9869.....	35.
10249.....	40.
10376.....	155.

(Testimony of Sol Zemansky.)

## Trustee's Exhibit No. 4 (Continued)

No.	Amount	No.	Amount
11384.....	\$ 50.00	18134.....	\$ 50.00
11657.....	115.	18329.....	50.
11856.....	65.	18349.....	60.
12214.....	90.	18743.....	110.
12370.....	175.	18846.....	50.
12663.....	125.	18861.....	125.
12664.....	75.	19123.....	65.
12847.....	150.	19279.....	65.
13013.....	50.	19325.....	70.
113424.....	100.	19335.....	50.
13471.....	70.	19362.....	50.
13591.....	125.	19643.....	65.
13745.....	50.	19668.....	50.
13848.....	115.	19720.....	100.
13929.....	100.	19873.....	85.
13984.....	85.	19925.....	50.
14013.....	100.	19963.....	50.
14106.....	65.	20206.....	50.
14180.....	125.	20243.....	80.
14227.....	100.	20322.....	125.
14285.....	75.	20362.....	150.
14376.....	100.	20409.....	50.
14504.....	75.	20424.....	75.
14581.....	50.	20443.....	50.
14981.....	70.	20458.....	100.
15053.....	40.	20507.....	60.
15239.....	60.	20501.....	60.
15060.....	60.	20520.....	75.
16131.....	59.	20750.....	65.
16672.....	100.	20162.....	100.
16883.....	55.	21083.....	60.
16973.....	40.	21111.....	100.
17054.....	150.	21199.....	125.
17084.....	150.	21237.....	75.
17126.....	50.	21366.....	100.
17593.....	75.	21557.....	125.
17767.....	100.	21600.....	50.
17762.....	150.	21721.....	175.

(Testimony of Sol Zemansky.)

## Trustee's Exhibit No. 4 (Continued)

No.	Amount	No.	Amount
21752.....	\$ 50.00	25250.....	\$ 75.00
21772.....	150.	25277.....	120.
21794.....	60.	25312.....	55.
21878.....	70.	25363.....	125.
22245.....	85.	25424.....	150.
22330.....	50.	25482.....	70.
22718.....	75.	25529.....	160.
22732.....	65.	25600.....	50.
22780.....	85.	25668.....	75.
22925.....	50.	25703.....	85.
22941.....	60.	25728.....	100.
23069.....	90.	25760.....	100.
23084.....	50.	25822.....	100.
23120.....	75.	25910.....	75.
23128.....	85.	25917.....	125.
23441.....	100.	26021.....	50.
23243.....	85.	26041.....	65.
23642.....	70.	26076.....	85.
23919.....	85.	26123.....	100.
23965.....	60.	26160.....	50.
24005.....	50.	26174.....	125.
24060.....	150.	26245.....	50.
24115.....	100.	26336.....	125.
24246.....	75.	26604.....	60.
24253.....	100.	26723.....	75.
24290.....	50.	26818.....	50.
24407.....	60.	26875.....	60.
24462.....	150.	26905.....	65.
24547.....	50.	26878.....	100.
24602.....	50.	27101.....	50.
24672.....	175.	27144.....	50.
24706.....	100.	27249.....	50.
24773.....	75.	27282.....	50.
24812.....	50.	27347.....	100.
24923.....	75.	27441.....	100.
24989.....	50.	27540.....	80.
25078.....	50.	27581.....	50.
25201.....	50.		



(Testimony of Sol Zemansky.)

## Trustee's Exhibit No. 4 (Continued)

No.	Amount	No.	Amount
27672.....	\$100.00	29453.....	\$ 70.00
27674.....	50.	29458.....	55.
27765.....	50.	29512.....	75.
27799.....	150.	29520.....	100.
27817.....	60.	29646.....	100.
27846.....	75.	29681.....	75.
27849.....	70.	29729.....	75.
27917.....	142.	29747.....	85.
27988.....	50.	29807.....	50.
28130.....	60.	29885.....	85.
28175.....	125.	29900.....	30.
28206.....	115.	29925.....	150.
28207.....	130.	29948.....	125.
28245.....	75.	29972.....	100.
28295.....	150.	29984.....	100.
28477.....	50.	30029.....	85.
28496.....	85.	30052.....	60.
28529.....	100.	30135.....	125.
28534.....	50.	30137.....	125.
28557.....	50.	30144.....	50.
28580.....	150.	30183.....	175.
28709.....	125.	30184.....	160.
28711.....	150.	30236.....	175.
28836.....	150.	30238.....	100.
28884.....	50.	30323.....	80.
28928.....	150.	30430.....	60.
28975.....	70.	30445.....	100.
29063.....	50.	30481.....	50.
29083.....	75.	30554.....	50.
29186.....	65.	30639.....	50.
28189.....	50.	30655.....	50.
29227.....	75.	30755.....	75.
29259.....	50.	30796.....	65.
29272.....	50.	30827.....	125.
29280.....	60.	30842.....	80.
29337.....	100.	30878.....	100.
29369.....	160.	30883.....	150.
29440.....	150.	30935.....	150.

(Testimony of Sol Zemansky.)

## Trustee's Exhibit No. 4 (Continued)

No.	Amount	No.	Amount
31047.....	\$100.00	32325.....	\$100.00
31056.....	50.	32328.....	100.
31027.....	90.	32329.....	60.
31046.....	100.	32357.....	50.
31059.....	75.	32369.....	75.
31157.....	50.	32384.....	100.
31231.....	50.	32385.....	50.
31300.....	85.	32410.....	50.
31329.....	130.	32414.....	135.
31347.....	90.	32443.....	80.
31391.....	75.	32460.....	50.
31408.....	75.	32508.....	150.
31448.....	50.	32515.....	150.
31474.....	175.	32576.....	110.
31481.....	125.	32673.....	50.
31494.....	50.	32682.....	100.
31702.....	65.	32684.....	75.
31747.....	85.	32735.....	50.
31780.....	125.	32775.....	60.
31800.....	75.	32780.....	75.
31802.....	162.	32786.....	50.
31911.....	100.	32905.....	150.
31936.....	100.	33005.....	50.
31955.....	50.	33006.....	50.
31987.....	50.	33103.....	125.
31997.....	90.	33258.....	75.
32012.....	90.	33296.....	60.
32054.....	85.	33314.....	150.
32079.....	100.	33332.....	120.
32104.....	50.	33401.....	75.
32134.....	124.	33442.....	100.
32184.....	75.	33470.....	55.
32210.....	150.	33598.....	75.
32213.....	50.	33630.....	75.
32266.....	100.	33647.....	100.
32273.....	85.	33668.....	75.
32281.....	100.	33685.....	125.
32284.....	175.	33715.....	175.

(Testimony of Sol Zemansky.)

## Trustee's Exhibit No. 4 (Continued)

No.	Amount	No.	Amount
33730.....	\$ 60.00	34872.....	\$125.00
33758.....	52.	34876.....	65.
33847.....	50.	34897.....	50.
33853.....	65.	34925.....	50.
33910.....	50.	34938.....	100.
33931.....	150.	34955.....	150.
33937.....	65.	34962.....	75.
33952.....	100.	34963.....	70.
33973.....	150.	35027.....	60.
33972.....	50.	35051.....	50.
34039.....	65.	35056.....	150.
34042.....	75.	35070.....	150.
34124.....	100.	35094.....	85.
34158.....	135.	35095.....	100.
34162.....	60.	35138.....	75.
34170.....	50.	35140.....	50.
34189.....	50.	35169.....	50.
34201.....	150.	35174.....	85.
34234.....	50.	35203.....	50.
34243.....	175.	35204.....	50.
34265.....	60.	35213.....	75.
34275.....	75.	35215.....	50.
34304.....	100.	35228.....	50.
34389.....	50.	35247.....	175.
34414.....	50.	35254.....	100.
34460.....	65.	35268.....	150.
34489.....	150.	35279.....	75.
34674.....	150.	35282.....	65.
34695.....	50.	35283.....	100.
34705.....	100.	35295.....	100.
34711.....	50.	35304.....	75.
34734.....	150.	35321.....	150.
34778.....	70.	35361.....	65.
34823.....	125.	35382.....	150.
34839.....	60.	35392.....	100.
34847.....	65.	35409.....	150.
34867.....	60.	35466.....	50.
		35497.....	55.

(Testimony of Sol Zemansky.)

## Trustee's Exhibit No. 4 (Continued)

No.	Amount	No.	Amount
35498.....	\$175.00	36328.....	\$ 75.00
35511.....	150.	36332.....	75.
35551.....	65.	36380.....	100.
35610.....	50.	36446.....	70.
35623.....	60.	36497.....	100.
35665.....	50.	36506.....	50.
35668.....	50.	36539.....	125.
35717.....	125.	36565.....	50.
35767.....	55.	36570.....	65.
35813.....	75.	36638.....	60.
35821.....	50.	36682.....	85.
35884.....	65.	36710.....	50.
35920.....	150.	36722.....	75.
35933.....	60.	36735.....	60.
35980.....	100.	36785.....	125.
35996.....	150.	36798.....	90.
36015.....	50.	25825.....	85.
36019.....	125.	36843.....	60.
36025.....	50.	36886.....	75.
36085.....	60.	36898.....	60.
36097.....	50.	36903.....	100.
36103.....	85.	36917.....	75.
36129.....	50.	36937.....	65.
36141.....	50.	36954.....	60.
36143.....	60.	36985.....	65.
36169.....	75.	37016.....	100.
36170.....	75.	37052.....	90.
36207.....	75.	37063.....	50.
36214.....	50.	37065.....	80.
36222.....	125.	37102.....	50.
36228.....	60.	37125.....	75.
36236.....	90.	37216.....	75.
36244.....	50.	37218.....	50.
36257.....	115.	37226.....	50.
36271.....	50.	37243.....	150.
36305.....	85.	37275.....	75.
36309.....	115.	37289.....	125.
36327.....	100.	37306.....	100.



(Testimony of Sol Zemansky.)

## Trustee's Exhibit No. 4 (Continued)

No.	Amount	No.	Amount
37307.....	\$ 75.00	38055.....	\$140.00
37308.....	100.	38068.....	150.
37336.....	175.	38091.....	85.
37338.....	75.	38125.....	100.
37362.....	55.	38151.....	50.
37393.....	150.	38170.....	75.
37429.....	50.	38183.....	125.
37502.....	75.	38203.....	50.
37521.....	60.	38213.....	50.
37575.....	50.	38216.....	75.
37598.....	75.	38231.....	75.
37618.....	50.	38328.....	100.
37619.....	50.	38362.....	50.
37662.....	50.	38418.....	100.
37744.....	75.	38428.....	50.
37757.....	55.	38459.....	100.
37760.....	50.	38498.....	125.
37770.....	50.	38512.....	100.
37776.....	125.	38543.....	60.
37795.....	65.	38619.....	100.
37809.....	65.	38638.....	60.
37814.....	125.	38645.....	50.
37821.....	55.	38658.....	175.
37833.....	60.	38687.....	200.
37838.....	80.	38697.....	100.
37864.....	50.	38701.....	55.
37895.....	175.	38762.....	50.
37901.....	100.	38763.....	75.
37949.....	50.	38770.....	100.
37989.....	80.	38776.....	75.
37980.....	75.	38782.....	175.
37990.....	75.	38787.....	125.
37995.....	100.	38811.....	75.
38003.....	50.	38816.....	125.
38006.....	100.	38830.....	75.
38023.....	100.	38841.....	110.
38038.....	150.	38874.....	100.
		38903.....	50.

(Testimony of Sol Zemansky.)

## Trustee's Exhibit No. 4 (Continued)

No.	Amount	No.	Amount
38909.....	\$ 60.00	39725.....	\$ 60.00
38937.....	85.	39735.....	150.
38971.....	60.	39757.....	75.
39024.....	65.	39776.....	125.
39031.....	125.	39777.....	65.
39041.....	75.	39814.....	150.
39046.....	175.	39816.....	75.
39053.....	75.	39891.....	150.
39059.....	200.	39912.....	200.
39069.....	50.	39915.....	50.
39120.....	75.	39917.....	150.
39132.....	50.	39921.....	150.
39182.....	50.	39945.....	150.
39191.....	50.	39991.....	175.
39232.....	75.	39994.....	150.
39235.....	60.	40002.....	80.
39273.....	70.	40006.....	100.
39277.....	125.	40047.....	50.
39302.....	50.	40061.....	50.
39308.....	65.	40062.....	65.
39313.....	50.	40071.....	50.
39332.....	110.	40077.....	60.
39350.....	150.	40125.....	100.
39364.....	85.	40127.....	150.
39380.....	50.	40154.....	50.
39392.....	50.	40167.....	75.
39427.....	55.	40117.....	65.
39435.....	100.	40189.....	50.
39446.....	100.	40190.....	50.
39449.....	50.	40233.....	65.
39451.....	70.	40253.....	105.
39484.....	50.	40266.....	70.
39521.....	100.	40274.....	150.
39546.....	125.	40313.....	65.
39563.....	50.	40381.....	50.
39574.....	50.	40388.....	65.
39626.....	50.	40404.....	80.
39651.....	100.		

(Testimony of Sol Zemansky.)

## Trustee's Exhibit No. 4 (Continued)

No.	Amount	No.	Amount
40418.....	\$ 60.00	41071.....	\$ 75.00
40424.....	150.	41082.....	50.
40443.....	100.	41085.....	150.
40445.....	60.	41095.....	50.
40486.....	90.	41103.....	100.
40490.....	100.	41110.....	50.
40537.....	75.	41115.....	50.
40541.....	160.	41136.....	75.
40550.....	50.	41143.....	75.
40571.....	50.	41148.....	50.
40576.....	50.	41154.....	50.
40607.....	200.	41192.....	100.
40615.....	150.	41193.....	100.
40653.....	185.	41233.....	50.
40662.....	150.	41224.....	125.
40666.....	60.	41245.....	50.
40672.....	70.	41281.....	200.
40690.....	50.	41301.....	100.
40756.....	85.	41312.....	75.
40778.....	60.	41347.....	80.
40789.....	100.	41362.....	160.
40818.....	50.	41443.....	90.
40824.....	135.	41454.....	175.
40825.....	115.	41455.....	60.
40830.....	130.	41468.....	50.
40853.....	150.	41487.....	65.
40859.....	80.	41504.....	175.
40860.....	75.	41516.....	70.
40869.....	75.	41534.....	75.
40876.....	75.	41545.....	175.
40884.....	75.	41566.....	65.
40888.....	125.	41601.....	80.
40909.....	75.	41638.....	60.
40929.....	200.	41644.....	150.
40930.....	50.	41647.....	65.
40991.....	200.	41669.....	50.
41045.....	75.	41701.....	50.
41051.....	50.	41706.....	75.

(Testimony of Sol Zemansky.)

## Trustee's Exhibit No. 4 (Continued)

No.	Amount	No.	Amount
41707.....	\$100.00	42459.....	\$ 60.00
41727.....	50.	42466.....	65.
41742.....	125.	42470.....	75.
41760.....	50.	42487.....	50.
41778.....	175.	42507.....	125.
41852.....	175.	42516.....	100.
41869.....	60.	42526.....	50.
41873.....	175.	42528.....	200.
41877.....	125.	42593.....	85.
41889.....	50.	42599.....	175.
41922.....	125.	42634.....	100.
41972.....	150.	42639.....	150.
41973.....	100.	42655.....	60.
42000.....	50.	42659.....	60.
42004.....	50.	42677.....	50.
42011.....	90.	42690.....	100.
42023.....	50.	42695.....	75.
42036.....	100.	42703.....	150.
42055.....	50.	42716.....	75.
42089.....	125.	42737.....	110.
42104.....	150.	42742.....	100.
42141.....	75.	42757.....	150.
42143.....	80.	42763.....	50.
42180.....	200.	42777.....	60.
42187.....	50.	42780.....	75.
42190.....	50.	42782.....	125.
42229.....	60.	42810.....	75.
42243.....	100.	42829.....	100.
42249.....	50.	42859.....	60.
42264.....	50.	42870.....	75.
42305.....	50.	42949.....	200.
42325.....	75.	42983.....	150.
42345.....	75.	42996.....	50.
42367.....	100.	43039.....	150.
42372.....	75.	43050.....	70.
42387.....	75.	43057.....	175.
42420.....	75.	43075.....	150.
42434.....	90.	43099.....	50.



(Testimony of Sol Zemansky.)

## Trustee's Exhibit No. 4 (Continued)

No.	Amount	No.	Amount
43109.....	\$125.00	43715.....	\$150.00
43130.....	125.	43766.....	60.
43153.....	75.	43779.....	65.
43169.....	60.	43785.....	200.
43175.....	70.	43790.....	65.
43200.....	100.	43798.....	175.
43227.....	50.	43812.....	125.
43233.....	60.	43832.....	50.
43234.....	75.	43845.....	60.
43284.....	100.	43860.....	55.
43295.....	125.	43873.....	80.
43296.....	50.	43916.....	200.
43302.....	125.	43938.....	50.
43306.....	65.	43994.....	60.
43310.....	100.	44051.....	60.
43314.....	75.	44058.....	135.
43323.....	100.	44063.....	60.
43327.....	125.	44076.....	125.
43343.....	75.	44094.....	135.
43351.....	50.	44096.....	85.
43367.....	80.	44120.....	75.
43372.....	100.	44121.....	125.
43380.....	50.	44128.....	75.
43397.....	75.	44153.....	75.
43416.....	75.	44156.....	100.
43430.....	60.	44170.....	75.
43448.....	50.	44173.....	125.
43461.....	55.	44199.....	55.
43503.....	200.	44201.....	50.
43533.....	75.	44204.....	200.
43542.....	125.	44208.....	150.
43564.....	100.	44229.....	65.
43593.....	100.	44230.....	65.
43613.....	50.	44232.....	65.
43632.....	100.	44244.....	200.
43641.....	60.	44260.....	200.
43652.....	125.	44298.....	85.
		44317.....	50.

(Testimony of Sol Zemansky.)

## Trustee's Exhibit No. 4 (Continued)

No.	Amount	No.	Amount
44323.....	\$150.00	44833.....	\$ 50.00
44331.....	50.	44855.....	125.
44339.....	125.	44864.....	100.
44356.....	75.	44875.....	80.
44357.....	75.	44896.....	70.
44360.....	50.	44901.....	60.
44398.....	75.	44907.....	135.
44402.....	60.	44938.....	50.
44407.....	50.	44953.....	90.
44408.....	50.	44957.....	85.
44410.....	50.	44959.....	100.
44418.....	50.	44960.....	80.
44442.....	65.	44966.....	50.
44448.....	70.	44976.....	60.
44458.....	100.	44983.....	75.
44460.....	65.	44993.....	100.
44469.....	50.	45006.....	200.
44494.....	50.	45013.....	60.
44496.....	60.	45026.....	150.
44550.....	100.	45029.....	200.
44576.....	50.	45083.....	100.
44577.....	50.	45096.....	75.
44593.....	100.	45135.....	125.
44635.....	125.	45148.....	85.
44665.....	50.	45156.....	75.
44668.....	135.	45154.....	105.
44680.....	50.	45158.....	60.
44692.....	125.	45159.....	100.
44697.....	50.	45171.....	150.
44709.....	75.	45173.....	50.
44720.....	50.	45188.....	80.
44726.....	100.	45195.....	125.
44731.....	50.	45198.....	100.
44739.....	75.	45199.....	200.
44743.....	60.	45235.....	50.
44764.....	100.	45254.....	175.
44799.....	125.	45260.....	50.
44802.....	125.	45334.....	75.

(Testimony of Sol Zemansky.)

## Trustee's Exhibit No. 4 (Continued)

No.	Amount	No.	Amount
45337.....	\$ 50.00	45767.....	\$235.00
45345.....	150.	45775.....	100.
45349.....	50.	45781.....	75.
45356.....	65.	45788.....	50.
45371.....	100.	45839.....	100.
45377.....	200.	45851.....	50.
45386.....	50.	45858.....	50.
45387.....	50.	45866.....	50.
45395.....	200.	45872.....	50.
45396.....	150.	45884.....	50.
45399.....	125.	45893.....	50.
45428.....	100.	45894.....	85.
45470.....	75.	45896.....	100.
45481.....	150.	45898.....	125.
45483.....	150.	45911.....	85.
45501.....	125.	45913.....	50.
45524.....	150.	45927.....	60.
45537.....	150.	45928.....	50.
45540.....	50.	45939.....	70.
45573.....	50.	45945.....	100.
45577.....	70.	45958.....	150.
45601.....	50.	45982.....	125.
45604.....	75.	45990.....	100.
45611.....	225.	46011.....	115.
45633.....	55.	46023.....	50.
45651.....	50.	46024.....	60.
45663.....	65.	46054.....	100.
45668.....	65.	46064.....	200.
45688.....	50.	46083.....	75.
45695.....	50.	46084.....	150.
45710.....	50.	46086.....	200.
45712.....	50.	46099.....	50.
45719.....	75.	46118.....	50.
45730.....	100.	46129.....	50.
45748.....	100.	46130.....	100.
45763.....	150.	46135.....	50.
45766.....	60.	46169.....	150.
		46197.....	125.

(Testimony of Sol Zemansky.)

## Trustee's Exhibit No. 4 (Continued)

No.	Amount	No.	Amount
46205.....	\$125.00	46855.....	\$125.00
46238.....	50.	46914.....	200.
46261.....	100.	46947.....	65.
46266.....	50.	46990.....	50.
46271.....	125.	47001.....	50.
46279.....	50.	47003.....	60.
46291.....	85.	47014.....	60.
46295.....	75.	47023.....	50.
46297.....	125.	47030.....	50.
46300.....	125.	47033.....	150.
46321.....	60.	47035.....	50.
46351.....	100.	47042.....	50.
46368.....	50.	47048.....	150.
46380.....	60.	47049.....	50.
46390.....	150.	47051.....	50.
46400.....	50.	47061.....	50.
46406.....	50.	47075.....	150.
46475.....	50.	47093.....	75.
46502.....	150.	47121.....	100.
46507.....	50.	47128.....	100.
46518.....	125.	47130.....	70.
46555.....	75.	47150.....	50.
46557.....	50.	47159.....	50.
46574.....	200.	47188.....	125.
46591.....	150.	47189.....	50.
46636.....	60.	47200.....	50.
46639.....	60.	47253.....	50.
46649.....	100.	47255.....	100.
46654.....	150.	47341.....	650.
46666.....	75.	47353.....	150.
46722.....	150.	47354.....	60.
46732.....	50.	47381.....	175.
46784.....	175.	47388.....	50.
46794.....	50.	47415.....	50.
46804.....	200.	47426.....	85.
46817.....	150.	47433.....	150.
46845.....	50.	47489.....	50.
46852.....	150.	47498.....	50.



(Testimony of Sol Zemansky.)

## Trustee's Exhibit No. 4 (Continued)

No.	Amount	No.	Amount
47508.....	\$ 70.00	47885.....	\$ 60.00
47513.....	65.	47894.....	50.
47522.....	75.	47908.....	50.
47561.....	50.	47909.....	100.
47575.....	65.	47923.....	75.
47580.....	75.	47929.....	200.
47591.....	60.	47930.....	50.
47606.....	50.	47952.....	50.
47609.....	75.	47965.....	75.
47610.....	150.	47976.....	80.
47636.....	50.	47977.....	100.
47690.....	125.	47978.....	60.
47695.....	60.	47985.....	100.
47698.....	60.	48002.....	100.
47703.....	75.	48016.....	60.
47704.....	100.	48028.....	60.
47717.....	150.	48058.....	50.
47719.....	150.	48063.....	50.
47738.....	50.	48066.....	60.
47740.....	60.	48072.....	60.
47780.....	60.	48087.....	75.
47783.....	200.	48115.....	100.
47787.....	100.	48117.....	75.
47788.....	75.	48126.....	350.
47810.....	100.	48138.....	50.
47837.....	60.	48139.....	50.
47854.....	75.	48161.....	50.
47862.....	50.		
47872.....	65.		

(Testimony of Sol Zemansky.)

Trustee's Exhibit No. 4 (Continued)

MISCELLANEOUS NUMBERS

No.	Amount	No.	Amount
92380.....	\$120.00	37438.....	\$230.00
26528.....	175.	32323.....	50.
27346.....	175.	28993.....	100.
28441.....	175.	42414.....	50.
39246.....	300.	46198.....	100.
39411.....	250.	43958.....	100.
43950.....	250.	23342.....	125.
42818.....	275.	27889.....	100.
43076.....	275.	48039.....	60.
46249.....	100.	45025.....	150.
35771.....	75.	24368.....	50.
33297.....	150.	29173.....	175.
32971.....	125.		
32778.....	100.		

Receipt of Pledge

I hereby acknowledge receipt of those certain pledge agreements and pawn tickets described in that certain contract executed on the 24th day of February, by and between the undersigned, and Sol Zemansky, Dave Zemansky and Abe Zemansky, doing business as the Provident Loan Association, State Loan Office, and Zemansky Brothers, in accordance with and pursuant to the terms of the said Agreement.

Dated this 24th day of February, 1939.

S. KLEINMAN

Sam Kleinman.

Receipt

The undersigned, Sol Zemansky, Dave Zemansky and Abe Zemansky, doing business as the Provident

(Testimony of Sol Zemansky.)

Trustee's Exhibit No. 4 (Continued)

Loan Association, State Loan Office, and Zemansky Brothers, hereby acknowledge that they have received from Sam Kleinman, the temporary custody of those certain pledge agreements and pawn-tickets described in that certain contract executed on the 24th day of February, 1939, by and between the undersigned and Sam Kleinman, for the limited purpose of using the same in accordance with the requirements of the aforesaid agreement.

It is understood that said pawn-tickets will be kept separate and apart from pawn-tickets belonging to the undersigned, and will not be commingled in any way with other pawn-tickets.

Dated: This 24th day of February, 1939.

SOL ZEMANSKY, DAVE

ZEMANSKY and ABE

ZEMANSKY, doing business

as the PROVIDENT LOAN

ASSOCIATION, STATE

LOAN OFFICE and

ZEMANSKY BROTHERS

By: ABE ZEMANSKY

---

Mr. Chotiner: May it be stipulated, also, gentlemen, for the purpose of saving time, that the subsequent contracts that were executed by the bankrupts and Mr. Kleinman, copies of them or

(Testimony of Sol Zemansky.)

the originals of them, are attached to the original claim on file herein.

Mr. Wolver: That is so stipulated.

Mr. Dienstag: The extra sheet of paper is part of the contract as well as part of the exhibit.

The Referee: All right.

Mr. Chotiner: The receipt. [88]

Mr. Dienstag: Yes.

The Referee: I will mark it together.

Mr. Chotiner: We will accept that stipulation; and we ask now to introduce as Trustee's exhibit next in order by reference copies of the contracts attached to the claim on file.

The Referee: You are just going to encumber the record. The claim itself is part of the record. You can simply stipulate that copies attached to the claim as exhibits to the claim are true and correct copies of the agreements in question.

Mr. Dienstag: So stipulated.

Mr. Laugharn: So that the Court will have a clear understanding of that, there was the agreement itself, and then Mr. Kleinman executed an instrument called a receipt of pledge, and then there was a further receipt executed by the bankrupts, whereby the bankrupts acknowledged that they have received from Mr. Kleinman temporary custody of the pledge agreements involved; so there are three instruments to each contract; isn't that correct?

Mr. Dienstag: Yes, but they all form part of one agreement.



(Testimony of Sol Zemansky.)

Mr. Laugharn: They are all clipped to the same one.

Mr. Dienstag: Yes.

Mr. Laugharn: That covers it.

The Referee: I should think then that you ought to [89] offer in evidence a specimen of that receipt, the second receipt to which you refer.

Mr. Wolver: It is attached.

Mr. Laugharn: The agreement is three instruments; first, a mimeographed instrument five pages long, then Exhibit A attached, then a sheet entitled "Receipt of pledge," and then another sheet entitled "Receipt," to each one of the agreements. This is not the one that was handed to the Court first. That is where I wanted to straighten the Court out.

The Referee: Is it all here; take a look at it.

Mr. Laugharn: They are not the same. This is Trustee's Exhibit No. 4. Now, this agreement is a basic agreement covering the \$100,000. After that there was a substitution of agreements which are attached to the claim. Those are not the same as this contract.

The Referee: A different form entirely?

Mr. Laugharn: The contract consists of three instruments, which I think in each instance are clipped together; first, a five-page mimeographed contract, with Exhibit A attached; second, a receipt of pledge, and, third, a receipt.

The Referee: You say this is a different form than Trustee's Exhibit 4.

(Testimony of Sol Zemansky.)

Mr. Laugharn: Yes.

The Referee: But the subsequent agreements are on the same form. [90]

Mr. Laugharn: Yes.

The Referee: Let us handle it this way. Let us mark as Trustee's Exhibit 5 by reference the copy of the contract dated March 2, 1939, covering the loan of \$25,920.50, attached to Kleinman's claim. Then let us put in as the next exhibit——

---

## TRUSTEE'S EXHIBIT No. 5

(By Reference)

### AGREEMENT

This Agreement, made this 2nd day of March, 1939, by and between Sol Zemansky, Dave Zemansky and Abe Zemansky, doing business under the fictitious firm names and styles of Zemansky Brothers, and the Provident Loan Association, and the State Loan Office, hereinafter referred to as "First Parties", and Sam Kleinman, hereinafter referred to as "Second Party",

Witnesseth:

Whereas, First Parties are now engaged in the business of pawnbroking and have in their possession pawn-tickets executed by lenders of money from First Parties; each ticket being distinguished by a certain serial number and being entitled "Provident Loan Association", and

(Testimony of Sol Zemansky.)

Trustee's Exhibit No. 5 (Continued)

Whereas, First Parties desire to borrow the sum of Twenty-five thousand, nine hundred twenty dollars and fifty cents (\$25,920.50) from Second Party, and

Whereas, First Parties desire to pledge the above described pawn-rickets to Second Party as security for payment of the said loan, as is more fully hereinafter set forth, and

Whereas, Second Party is willing to loan said Twenty-five thousand, nine hundred twenty dollars and fifty cents (\$25,920.50) to First Parties on the terms and conditions hereinafter set forth.

Now, Therefore, it is hereby mutually agreed by and between the parties hereto as follows, to-wit:

First: First Parties do hereby agree to make, execute and deliver to Second Party, five (5) promissory notes in the amount of Five thousand (\$5,000.00) Dollars each, and one (1) promissory note in the amount of Nine hundred twenty dollars and fifty cents (\$920.50), all in the manner and form of the notes attached hereto and made a part hereof;

Second: First Parties agree to transfer and deposit by way of a pledge with Second Party, as collateral security for the payment of each and all of said promissory notes, and as security for the payment of all interest, costs, expenses and fees that may accrue thereon, the pledge-agreements and pawn-tickets, the numbers of



(Testimony of Sol Zemansky.)

Trustee's Exhibit No. 5 (Continued)

which are contained in "Exhibit A" attached hereto and made a part hereof, which are now in the possession of First Parties;

Third: In case of the non-payment of the said promissory notes, or the interest thereon, when due, according to the tenor thereof, First Parties do hereby appoint and constitute Second Party, his heirs or assigns, their attorney irrevocable, with power of substitution to sell, without advertising, at any time after any of said notes or interest thereon become due, with or without notice or demand, at the option of said Second Party, the whole or any part of said security, either at public or private sale, at his discretion; and to deliver the same to the purchaser or purchasers; and the proceeds to be applied to the payment of said promissory notes or note, interest due, attorney's fees, and other expenses accruing thereupon, and any surplus after payment of said note, interest, and expenses to be paid to First Parties. And First Parties do hereby agree to pay on demand to said Second Party, his heirs or assigns, whatever deficit may result after applying the net proceeds of such sale to payment of said principal, expenses, and attorney's fees. Should any such sale be made, Second Party, or his assigns, directly or in the name of any other person, shall have the right to purchase;



(Testimony of Sol Zemansky.)

Trustee's Exhibit No. 5 (Continued)

Fourth: Second Party does hereby appoint First Parties, his agent, and First Parties do hereby agree to act as agent for Second Party, without charge to Second Party, for the purpose of collecting any and all sums of money which may be due, owing, or unpaid upon and in respect to each of the said pawn-tickets, and pledge-agreements, and First Parties do hereby agree to collect such moneys and hold the same in trust for the purpose of applying such money so collected to the payment of the six (6) promissory notes hereinbefore described, and First Parties will, upon demand, so pay and apply said moneys to the payment of the said promissory notes;

Fifth: First Parties do hereby waive the provisions of Sections 3001 and 3006 of the Civil Code of the State of California;

Sixth: In case suit or action be brought by Second Party to enforce the terms and provisions of this agreement or of any of said notes executed by First Parties, or in the event of a sale of the personal property herein pledged by First Parties, First Parties agree to pay reasonable attorney's fees incurred by Second Party in such suit, action, or sale;

Seventh: First Parties do hereby agree to retain in their possession every article pledged and pawned to them in respect to and by virtue

(Testimony of Sol Zemansky.)

Trustee's Exhibit No. 5 (Continued)

of the foregoing pawn-tickets, and to deliver them to the owners thereof, or assignees of said owners, only upon redemption of said pawn-tickets by the payment of the same as provided in Section 3 of Statutes of California, 1935, Page 1613; and after the expiration of time limited by the terms of said Paragraph 3 of said Act, First Parties shall hold any such articles so pledged and pawned for the benefit of and to the order of Second Party;

Eighth: First Parties shall keep true and accurate books, records, and accounts respecting the articles pledged and pawned and collection of the moneys due upon the above described pawn-tickets, and all such books, records, and accounts shall be open to inspection by Second Party at all reasonable times;

Ninth: Neither this agreement nor any of the terms, provisions, nor covenants herein are deemed to nor shall the same be construed to mean that Second Party is a partner or joint adventurer with First Parties, but that the meaning and intent of this agreement is that Second Party is a lender, creditor and pledger of First Parties;

Tenth: The benefits and burdens of this agreement shall run, inure to and bind each of the parties hereto, his heirs, administrators and assigns.

(Testimony of Sol Zemansky.)

## Trustee's Exhibit No. 5 (Continued)

In Witness Whereof, the parties hereto have hereunto set their hands and seals, on the date first herein mentioned.

DAVE ZEMANSKY

SOL ZEMANSKY

ABE ZEMANSKY

“First Parties”

S. KLEINMAN

“Second Party”

## EXHIBIT A

No.	Amount	No.	Amount
46755.....	\$ 40.00	46984.....	\$ 30.00
46759.....	25.00	46986.....	45.00
46773.....	25.00	47000.....	30.00
46779.....	25.00	47018.....	25.00
46799.....	25.00	47588.....	25.00
46802.....	40.00	47595.....	30.00
46810.....	40.00	47597.....	30.00
46811.....	40.00	47608.....	40.00
46816.....	30.00	47630.....	25.00
46818.....	30.00	47642.....	40.00
46840.....	35.00	48643.....	35.00
46857.....	30.00	47658.....	25.00
46869.....	35.00	47685.....	30.00
46870.....	35.00	47689.....	25.00
46880.....	25.00	47706.....	40.00
46898.....	25.00	47707.....	25.00
46910.....	35.00	47721.....	27.00
46935.....	40.00	47739.....	35.00
46936.....	25.00	47749.....	25.00
46954.....	30.00	47767.....	25.00
46959.....	40.00	47784.....	25.00
46968.....	25.00	47789.....	40.00
46970.....	30.00	47790.....	25.00
46983.....	40.00	47821.....	40.00

(Testimony of Sol Zemansky.)

## Trustee's Exhibit No. 5 (Continued)

No.	Amount	No.	Amount
47823.....	\$ 30.00	47904.....	\$ 25.00
47832.....	35.00	47905.....	25.00
47834.....	25.00	47907.....	30.00
47847.....	30.00	47911.....	35.00
47850.....	25.00	47948.....	25.00
47869.....	30.00	47994.....	35.00
47870.....	35.00	48000.....	30.00
47040.....	30.00	48021.....	35.00
47052.....	30.00	48036.....	30.00
47055.....	35.00	48040.....	25.00
47056.....	30.00	48042.....	30.00
47059.....	35.00	47078.....	40.00
47060.....	35.00	48130.....	25.00
47167.....	35.00	48132.....	35.00
47169.....	25.00	48146.....	25.00
47173.....	30.00	48150.....	40.00
47174.....	40.00	48172.....	25.00
47179.....	30.00	48176.....	25.00
47203.....	40.00	48184.....	25.00
47206.....	30.00	48213.....	30.00
47207.....	35.00	48246.....	40.00
47218.....	25.00	48253.....	35.00
47225.....	35.00	48258.....	30.00
47233.....	30.00	48275.....	25.00
47237.....	30.00	48276.....	40.00
47241.....	40.00	48277.....	40.00
47262.....	35.00	47321.....	40.00
47275.....	45.00	47324.....	25.00
47278.....	30.00	47332.....	30.00
47293.....	25.00	47336.....	30.00
47294.....	25.00	47344.....	40.00
47303.....	25.00	47346.....	25.00
47304.....	25.00	47351.....	25.00
47308.....	30.00	47352.....	30.00
47317.....	30.00	47355.....	25.00
47895.....	40.00	47373.....	30.00
47903.....	25.00	47394.....	40.00



(Testimony of Sol Zemansky.)

## Trustee's Exhibit No. 5 (Continued)

No.	Amount	No.	Amount
47408.....	\$ 40.00	74373.....	\$100.00
47411.....	30.00	74844.....	75.00
47414.....	45.00	75146.....	75.00
47418.....	30.00	76339.....	100.00
47429.....	25.00	77091.....	80.00
47437.....	30.00	78826.....	35.00
47438.....	35.00	79200.....	55.00
47458.....	40.00	79390.....	30.00
47500.....	25.00	79843.....	125.00
47515.....	30.00	80088.....	80.00
47518.....	25.00	81795.....	75.00
47533.....	40.00	82149.....	30.00
47539.....	25.00	82331.....	45.00
47565.....	25.00	82544.....	125.00
47569.....	25.00	82608.....	35.00
47573.....	25.00	82655.....	75.00
47587.....	35.00	83114.....	60.00
48286.....	30.00	83619.....	85.00
48290.....	30.00	84408.....	30.00
48298.....	35.00	84984.....	30.00
48385.....	40.00	89158.....	50.00
48388.....	25.00	91793.....	35.00
48407.....	25.00	92380.....	120.00
48421.....	40.00	92963.....	35.00
48435.....	30.00	93187.....	30.00
48436.....	35.00	93478.....	40.00
48464.....	25.00	94203.....	200.00
48465.....	25.00	97688.....	143.00
48469.....	40.00	94009.....	125.00
48493.....	40.00	94116.....	35.00
48494.....	40.00	94387.....	35.00
1419.....	50.00	95713.....	30.00
14940.....	110.00	96597.....	30.00
17946.....	55.00	97618.....	42.50
72721.....	40.00	97825.....	40.00
73068.....	40.00	48480.....	75.00
73657.....	40.00	48471.....	50.00
74099.....	45.00		

(Testimony of Sol Zemansky.)

## Trustee's Exhibit No. 5 (Continued)

No.	Amount	No.	Amount
48484.....	\$100.00	31497.....	\$ 45.00
69592.....	125.00	31845.....	70.00
38753.....	25.00	33724.....	60.00
38784.....	35.00	33815.....	60.00
38831.....	35.00	35985.....	55.00
38836.....	25.00	36835.....	75.00
38854.....	25.00	39213.....	60.00
38858.....	25.00	39598.....	50.00
38894.....	40.00	40881.....	125.00
38912.....	45.00	41625.....	135.00
38988.....	35.00	42140.....	60.00
39149.....	45.00	42056.....	50.00
39152.....	30.00	42184.....	40.00
39158.....	35.00	42946.....	85.00
39159.....	35.00	43383.....	40.00
39174.....	25.00	45842.....	60.00
39177.....	30.00	46434.....	100.00
39203.....	25.00	47108.....	40.00
39212.....	25.00	47250.....	90.00
39251.....	30.00	39502.....	30.00
39269.....	35.00	39503.....	35.00
39275.....	30.00	39542.....	25.00
39314.....	30.00	39600.....	55.00
39323.....	30.00	39601.....	30.00
39381.....	25.00	39624.....	25.00
39395.....	25.00	39653.....	25.00
39439.....	25.00	39656.....	35.00
39481.....	35.00	39675.....	40.00
97950.....	100.00	39701.....	25.00
99107.....	42.50	39728.....	30.00
99552.....	30.00	39732.....	45.00
99942.....	35.00	39772.....	30.00
20323.....	140.00	39790.....	30.00
21579.....	110.00	39805.....	30.00
23186.....	45.00	39829.....	30.00
23995.....	60.00	39845.....	25.00
30235.....	125.00	39890.....	25.00
30615.....	150.00	39893.....	35.00

(Testimony of Sol Zemansky.)

## Trustee's Exhibit No. 5 (Continued)

No.	Amount	No.	Amount
39936.....	\$ 40.00	48459.....	\$ 50.00
39951.....	40.00	48473.....	50.00
39997.....	35.00	40256.....	40.00
40017.....	35.00	40268.....	45.00
40089.....	35.00	40290.....	40.00
40138.....	25.00	40308.....	35.00
40160.....	40.00	40325.....	35.00
40165.....	25.00	40331.....	35.00
40188.....	37.50	40337.....	40.00
40247.....	25.00	40338.....	25.00
40243.....	40.00	40366.....	25.00
47284.....	40.00	40377.....	40.00
47572.....	125.00	40438.....	35.00
47578.....	125.00	40469.....	40.00
47604.....	175.00	40484.....	25.00
47938.....	80.00	40543.....	33.00
48136.....	75.00	40567.....	25.00
43166.....	125.00	40584.....	40.00
48297.....	90.00	40587.....	40.00
48331.....	50.00	40590.....	45.00
48333.....	50.00	40611.....	35.00
48339.....	75.00	40630.....	35.00
48208.....	50.00	40649.....	45.00
48249.....	60.00	40654.....	30.00
48255.....	75.00	40658.....	25.00
48287.....	85.00	40663.....	35.00
48289.....	75.00	40708.....	25.00
48351.....	60.00	40774.....	30.00
48359.....	75.00	40839.....	35.00
48365.....	50.00	40842.....	40.00
48377.....	75.00	40855.....	25.00
48382.....	50.00	40858.....	35.00
48384.....	60.00	40875.....	25.00
48409.....	50.00	40924.....	35.00
48426.....	55.00	40970.....	35.00
48429.....	60.00	40975.....	25.00
48433.....	100.00	40998.....	35.00
48458.....	60.00		

(Testimony of Sol Zemansky.)

## Trustee's Exhibit No. 5 (Continued)

No.	Amount	No.	Amount
41029.....	\$ 30.00	41776.....	\$ 40.00
41153.....	25.00	41777.....	40.00
41221.....	30.00	41806.....	30.00
41229.....	25.00	41902.....	30.00
41239.....	25.00	41903.....	40.00
41266.....	35.00	41910.....	30.00
41270.....	40.00	41932.....	35.00
41273.....	40.00	41938.....	25.00
41285.....	25.00	41980.....	25.00
41307.....	25.00	41991.....	25.00
41324.....	30.00	42024.....	45.00
41334.....	25.00	42025.....	25.00
41356.....	40.00	42027.....	30.00
41360.....	42.50	42035.....	40.00
41365.....	25.00	42062.....	35.00
41370.....	35.00	42081.....	30.00
41377.....	35.00	42100.....	35.00
41380.....	40.00	42109.....	25.00
41402.....	35.00	42128.....	30.00
41448.....	25.00	42139.....	25.00
41466.....	25.00	42157.....	25.00
41477.....	25.00	42168.....	30.00
41507.....	25.00	42178.....	30.00
41538.....	35.00	42212.....	40.00
41571.....	30.00	42254.....	35.00
41584.....	30.00	42255.....	35.00
41611.....	30.00	42266.....	40.00
41621.....	40.00	42288.....	30.00
41645.....	35.00	42309.....	35.00
41682.....	40.00	42333.....	100.00
41692.....	30.00	42343.....	30.00
41708.....	25.00	42353.....	35.00
41711.....	35.00	42362.....	30.00
41737.....	25.00	42363.....	30.00
41754.....	25.00	42379.....	30.00
41756.....	35.00	42380.....	30.00
41764.....	30.00	42411.....	30.00
41766.....	30.00	42419.....	25.00



(Testimony of Sol Zemansky.)

## Trustee's Exhibit No. 5 (Continued)

No.	Amount	No.	Amount
42427.....	\$ 25.00	43232.....	\$ 40.00
42502.....	40.00	43235.....	70.00
42512.....	25.00	43286.....	30.00
42525.....	30.00	43330.....	25.00
42530.....	25.00	43331.....	30.00
42610.....	30.00	43338.....	40.00
42627.....	30.00	43350.....	35.00
42699.....	35.00	43353.....	40.00
42700.....	25.00	43361.....	25.00
42722.....	35.00	43363.....	25.00
42773.....	30.00	43368.....	35.00
42786.....	40.00	43377.....	25.00
42822.....	40.00	43382.....	25.00
42831.....	25.00	43406.....	25.00
42838.....	25.00	43426.....	35.00
42843.....	40.00	43432.....	26.00
42845.....	25.00	43434.....	35.00
42873.....	35.00	43442.....	25.00
42899.....	30.00	43443.....	30.00
42905.....	25.00	43475.....	35.00
42907.....	30.00	43484.....	40.00
42916.....	35.00	43494.....	45.00
42932.....	25.00	43502.....	30.00
42978.....	30.00	43571.....	25.00
42988.....	25.00	43616.....	25.00
42994.....	25.00	43624.....	25.00
43006.....	35.00	43630.....	25.00
43008.....	25.00	43666.....	35.00
43061.....	25.00	43669.....	25.00
43064.....	40.00	43717.....	25.00
43065.....	25.00	43725.....	25.00
43113.....	25.00	43733.....	25.00
43119.....	30.00	43742.....	25.00
43120.....	45.00	43773.....	25.00
43124.....	30.00	43781.....	35.00
43185.....	25.00	43793.....	35.00
43193.....	25.00	43810.....	40.00
43228.....	30.00	43813.....	45.00

(Testimony of Sol Zemansky.)

## Trustee's Exhibit No. 5 (Continued)

No.	Amount	No.	Amount
43816.....	\$ 35.00	44316.....	\$ 35.00
43835.....	35.00	44368.....	35.00
43837.....	25.00	44375.....	25.00
43846.....	25.00	44388.....	45.00
43869.....	30.00	44391.....	25.00
43880.....	35.00	44413.....	25.00
43883.....	35.00	44422.....	30.00
43886.....	25.00	44462.....	45.00
43887.....	25.00	44475.....	25.00
43888.....	35.00	44488.....	35.00
43892.....	30.00	44489.....	35.00
43910.....	40.00	44490.....	25.00
43912.....	35.00	44491.....	25.00
43936.....	35.00	44497.....	45.00
43947.....	40.00	44525.....	30.00
43949.....	30.00	44532.....	25.00
43954.....	25.00	44546.....	35.00
43962.....	25.00	44551.....	38.00
44000.....	30.00	44578.....	25.00
44037.....	35.00	44590.....	30.00
44038.....	40.00	44599.....	35.00
44054.....	30.00	44600.....	35.00
44073.....	30.00	44606.....	30.00
44074.....	35.00	44622.....	40.00
44082.....	40.00	44640.....	25.00
44100.....	25.00	44659.....	25.00
44112.....	25.00	44669.....	30.00
44130.....	30.00	44361.....	30.00
44162.....	25.00	44682.....	25.00
44166.....	30.00	44696.....	30.00
44180.....	35.00	44702.....	35.00
44185.....	25.00	44703.....	25.00
44191.....	40.00	44704.....	35.00
44198.....	40.00	44708.....	35.00
44225.....	25.00	44719.....	25.00
44247.....	25.00	44725.....	30.00
44270.....	25.00	44732.....	30.00
		44751.....	25.00

(Testimony of Sol Zemansky.)

## Trustee's Exhibit No. 5 (Continued)

No.	Amount	No.	Amount
44758.....	\$ 25.00	45281.....	\$ 30.00
44760.....	25.00	45282.....	35.00
44772.....	25.00	45283.....	25.00
44787.....	40.00	45287.....	30.00
44786.....	25.00	45296.....	30.00
44795.....	30.00	45299.....	25.00
44817.....	40.00	45313.....	25.00
44822.....	25.00	45315.....	30.00
44826.....	40.00	45331.....	30.00
44846.....	30.00	45346.....	40.00
44859.....	40.00	45350.....	40.00
44860.....	30.00	45357.....	35.00
44874.....	40.00	45380.....	30.00
44913.....	40.00	45383.....	25.00
44931.....	35.00	45406.....	35.00
44952.....	25.00	45420.....	25.00
44971.....	40.00	45432.....	35.00
44974.....	30.00	45435.....	25.00
44994.....	40.00	45436.....	35.00
45001.....	35.00	45450.....	25.00
45012.....	30.00	45455.....	25.00
45023.....	35.00	45456.....	30.00
45060.....	35.00	45459.....	25.00
45082.....	25.00	45467.....	30.00
45085.....	25.00	45484.....	40.00
45087.....	40.00	45494.....	40.00
45105.....	35.00	45517.....	25.00
45114.....	25.00	45521.....	28.00
45129.....	25.00	45522.....	35.00
45144.....	45.00	45534.....	35.00
45150.....	35.00	45533.....	40.00
45178.....	40.00	45548.....	30.00
45201.....	25.00	45555.....	30.00
45204.....	30.00	45580.....	30.00
45212.....	30.00	45582.....	35.00
45217.....	35.00	45587.....	35.00
45238.....	25.00	45597.....	35.00
45273.....	30.00	45609.....	30.00

(Testimony of Sol Zemansky.)

Trustee's Exhibit No. 5 (Continued)

No.	Amount	No.	Amount
45615.....	\$ 30.00	45850.....	\$ 25.00
45626.....	40.00	45860.....	25.00
45632.....	40.00	45867.....	40.00
45637.....	45.00	45878.....	35.00
45640.....	30.00	45904.....	30.00
45642.....	25.00	45917.....	25.00
45646.....	35.00	45920.....	35.00
45649.....	30.00	45755.....	40.00
45650.....	30.00	45761.....	25.00
45670.....	40.00	45779.....	40.00
45680.....	25.00	45786.....	25.00
45681.....	40.00	45936.....	25.00
45693.....	25.00	45942.....	40.00
45713.....	25.00	45954.....	30.00
45714.....	25.00	45964.....	30.00
45727.....	30.00	45978.....	25.00
45738.....	30.00	45994.....	35.00
45806.....	40.00	43738.....	25.00
45816.....	30.00		

\$5000.00

March 1939

.....days after date, without grace we promise to pay to the order of S. Kleinman Five Thousand and no/100 (\$5,000.00) Dollars, For Value received, with interest from date at the rate of 10 per cent per annum until paid. Principal and interest payable in Lawful Money of the United States at Los Angeles, California and in case suit is instituted to collect this note or any portion thereof, we promise to pay such additional sum as the Court may adjudge reasonable as Attorney's fees in said suit.

ZEMANSKY BROS.,

PROVIDENT LOAN ASS'N.

&

STATE LOAN OFFICE



(Testimony of Sol Zemansky.)

Trustee's Exhibit No. 5 (Continued)

\$920.50

March 1939

.....days after date, without grace we promise to pay to the order of S. Kleinman Nine Hundred Twenty and 50/100 (\$920.50) Dollars, For Value received, with interest from date at the rate of 10 per cent per annum until paid. Principal and interest payable in Lawful Money of the United States at Los Angeles, California and in case suit is instituted to collect this note or any portion thereof, we promise to pay such additional sum as the Court may adjudge reasonable as Attorney's fees in said suit.

ZEMANSKY BROS.,  
PROVIDENT LOAN ASS'N.,  
&  
STATE LOAN OFFICE

No..... Due 1939.

Receipt of Pledge

I hereby acknowledge receipt of those certain pledge agreements and pawn-tickets described in that certain contract executed on the 2 day of March, 1939, by and between the undersigned, and Sol Zemansky, Dave Zemansky and Abe Zemansky, doing business as the Provident Loan Association, State Loan Office, and Zemansky Brothers, in accordance with and pursuant to the terms of the said Agreement.

(Testimony of Sol Zemansky.)

Trustee's Exhibit No. 5 (Continued)

Dated: This 2 day of March, 1939.

SAM KLEINMAN

Sam Kleinman

Receipt

The undersigned, Sol Zemansky, Dave Zemansky and Abe Zemansky, doing business as the Provident Loan Association, State Loan Office, and Zemansky Brothers, hereby acknowledge that they have received from Sam Kleinman, the temporary custody of those certain pledge agreements and pawn-tickets described in that certain contract executed on the 2 day of March, 1939, by and between the undersigned and Sam Kleinman, for the limited purpose of using the same in accordance with the requirements of the aforesaid agreement.

It is understood that said pawn-tickets will be kept separate apart from pawn-tickets belonging to the undersigned, and will not be commingled in any way with other pawn-tickets.

Dated: This 2 day of March, 1939.

SOL ZEMANSKY, DAVE

ZEMANSKY and ABE

ZEMANSKY, doing business

as the PROVIDENT LOAN

ASSOCIATION, STATE

LOAN OFFICE and

ZEMANSKY BROTHERS

By: ABE ZEMANSKY

(Testimony of Sol Zemansky.)

Mr. Laugharn: I think all the rest are the same.

Mr. Dienstag: Yes.

The Referee: I would rather not do that. Somebody may insist that you keep all these in the record. The next one I see here is the contract dated March 22nd, covering \$2,510. Now, is it your understanding, gentlemen, that including that contract and from there on, they are all in the same form?

Mr. Dienstag: Yes, your Honor.

The Referee: All right. Trustee's Exhibit 6 by reference, copy of the contract dated March 22, 1939, covering the loan of \$2,510, attached to the Kleinman claim. Are you all then willing to stipulate that all subsequent contracts are in the same form as Trustee's Exhibit No. 6 by reference?

Mr. Dienstag: Yes, your Honor.

Mr. Laugharn: So stipulated. [91]

---

## TRUSTEE'S EXHIBIT No. 6

(By Reference)

This Agreement, made this 22 day of March, 1939, by and between Sol Zemansky, Dave Zemansky and Abe Zemansky, individually, and doing business under the fictitious firm names and styles of Zemansky Brothers, and the Provident Loan Association, and the State Loan Office, hereinafter re-

(Testimony of Sol Zemansky.)

ferred to as "First Parties", and Sam Kleinman, hereinafter referred to as "Second Party",

Witnesseth:

Whereas, First Parties are now engaged in the business of pawnbroking and have in their possession pawn-tickets executed by lenders of money from First Parties; each ticket being distinguished by a certain serial number and being entitled "Provident Loan Association", and

Whereas, First Parties desire to borrow the sum of Twenty-Five Hundred and Ten Dollars (\$2510) from Second Party, and

Whereas, First Parties desire to pledge the above described pawn-tickets to Second Party as security for payment of the said loan, as is more fully hereinafter set forth, and

Whereas, Second Party is willing to loan said Twenty-Five Hundred and Ten Dollars (\$2510) to First Parties on the terms and conditions hereinafter set forth.

Now, Therefore, it is hereby mutually agreed by and between the parties hereto as follows, to-wit:

First: First Parties do hereby agree to make, execute and deliver to Second Party, one promissory notes in the amount of Twenty-Five Hundred and Ten Dollars each, in the amount of Twenty-Five Hundred and Ten Dollars, all in the manner and form of the notes attached hereto and made a part hereof;

Second: First Parties agree to transfer and de-



(Testimony of Sol Zemansky.)

posit by way of a pledge with Second Party, as collateral security for the payment of each and all of said promissory notes, and as security for the payment of all interests, costs, expenses and fees that may accrue thereon, the pledge-agreements and pawn-tickets, the numbers of which are contained in "Exhibit A" attached thereto and made a part hereof, which are now in the possession of First Parties; and First Parties do hereby warrant that every pawn-ticket and the representations thereon with respect to the property and loan amount for which said pawn-ticket was given is the result of a bona fide transaction, not subject to counter-claim or setoff of any kind or nature.

Third: In case of the non-payment of the said promissory notes, or the interest thereon, when due, according to the tenor thereof, First Parties do hereby appoint and constitute Second Party, his heirs or assigns, their attorney irrevocable, with power of substitution to sell, without advertising, at any time after any of said notes or interest thereon become due, with or without notice or demand, at the option of said Second Party, the whole or any part of said security, consisting of said pawn-tickets and such property which by the terms of Act 5826 of the Statutes of California, 1935, page 1613, has become the property of the First Parties and which has become the property pledged to the Second Party by First Parties by virtue of this agreement in place and in stead of the pawn-ticket representing the rights in such property, either at public

(Testimony of Sol Zemansky.)

or private sale, at his discretion; and to deliver the same to the purchaser or purchasers; and the proceeds to be applied to the payment of said promissory notes or note, interest due, attorney's fees, and other expenses accruing thereupon, and any surplus after payment of said note, interest, and expenses to be paid to First Parties, or their representative upon demand. And First Parties do hereby agree to pay on demand to said Second Party, his heirs or assigns, whatever deficit may result after applying the net proceeds of each sale to payment of said principal, expenses, and attorney's fees. Should any such sale be made, Second Party, or his assigns, directly or in the name of any other person, shall have the right to purchase;

Fourth: Second Party does hereby appoint First Parties, his agent, and First Parties do hereby agree to act as agent for Second Party, without charge to Second Party, for the purpose of collecting any and all sums of money which may be due, owing, or unpaid upon and in respect to each of the said pawn-tickets, and pledge-agreements, and First Parties do hereby agree to collect such moneys and hold the same in trust for the purpose of applying such money so collected to the payment of the ..... promissory notes hereinbefore described, and First Parties will, upon demand, so pay and apply said moneys to the payment of the said promissory notes;

Fifth: First Parties do hereby waive the provisions of Sections 3001, 3004, 3005 and 3006 of the Civil Code of the State of California;

(Testimony of Sol Zemansky.)

Sixth: In case suit or action be brought by Second Party to enforce the terms and provisions of this agreement or of any of said notes executed by First Parties, or in the event of a sale of the personal property herein pledged by First Parties, First Parties agree to pay reasonable attorney's fees incurred by Second Party in such suit, action, or sale;

Seventh: First Parties do hereby agree to retain in their possession every article pledged and pawned to them in respect to and by virtue of the foregoing pawn-tickets, and to deliver them to the owners thereof, or assignees of said owners, only upon redemption of said pawn-tickets by the payment of the same as provided in Section 3 of Statutes of California, 1935, Page 1613; and after the expiration of time limited by the terms of said Paragraph 3 of said Act, First Parties shall hold any such articles so pledged and pawned for the benefit of and to the order of Second Party.

Eighth: First Parties shall keep true and accurate books, records, and accounts respecting the articles pledged and pawned and collection of the moneys due upon the above described pawn-tickets, and all such books, records, and accounts shall be open to inspection by Second Party at all reasonable times:

Ninth: Neither this agreement nor any of the terms, conditions, nor covenants herein are deemed to nor shall the same be construed to mean that Second Party is a partner or joint adventurer with



(Testimony of Sol Zemansky.)

First Parties, but that the meaning and intent of this agreement is that Second Party is a lender, creditor and pledgor of First Parties;

Tenth: Nothing in this agreement contained shall be construed so as to prohibit the Second Party from bringing suit or action upon the within described notes to enforce the payment thereof in a proceeding separate and apart from any other rights which Second Party may acquire by reason of this agreement.

Eleventh: Waiver or modification in any one or more instances by the Second Party of any of the terms, covenants or provisions of this agreement shall not thereafter be deemed a waiver or modification thereof, the same nevertheless to thereafter remain in full force and effect.

Twelfth: The illegality of any provision of this agreement shall not affect the validity of any of the other provisions hereof.

Nothing in this agreement shall be construed to require the commission of any act contrary to law, and wherever there is a conflict between any provisions of this agreement and any material statute, law or ordinance contrary to which the parties have no legal right to contract, the latter shall prevail, and in such event, the provisions of this agreement affected shall be curtailed, and limited only to the extent necessary to bring the same *with* the legal statute, law or ordinance.

Thirteenth: The benefits and burdens of this



(Testimony of Sol Zemansky.)  
agreement shall run, inure to and bind each of the parties hereto, his heirs, administrators and assigns.  
In Witness Whereof the parties hereto have hereunto set their hands the day and year first above written.

SOL ZEMANSKY  
DAVE ZEMANSKY  
ABE ZEMANSKY  
Individually and doing business  
as the Provident Loan Association,  
State Loan Office and Zemansky Brothers,  
First Parties  
SAM KLEINMAN  
Second Party  
Exhibit A

Agreement of March 22, 1939

NOS. OF PAWN TICKETS AND FACE AMOUNTS

48503.....	\$200.00
48505.....	100.00
48513.....	75.00
48518.....	100.00
48530.....	60.00
48537.....	300.00
48538.....	90.00
48540.....	300.00
48542.....	75.00
48547.....	100.00
48563.....	50.00
48567.....	50.00
48569.....	100.00
48597.....	60.00
48603.....	150.00
48608.....	150.00

(Testimony of Sol Zemansky.)

Nos. of Pawn Tickets and Face Amounts—(Continued)

48626.....	100.00
48637.....	65.00
48638.....	60.00
48645.....	225.00
48651.....	100.00

Exhibit B

Copy of Notes

\$2510.00

Los Angeles, Cal., *Mach* 22, 1939

5 days after date, without grace, we promise to pay to the order of Sam Kleinman Twenty-Five Hundred and Ten Dollars, For Value received, with interest from date at the rate of 10% per cent per annum until paid. Principal and interest payable in Lawful Money of the United States at 1407 Ege Cliffe Dri Los Angeles Calif. and in case suit is instituted to collect this note or any portion thereof, we promise to pay such additional sum as the Court may ad-judge reasonable as Attorney’s fees in said suit.

CAP.

No..... Due .....

Receipt of Pledge

I hereby acknowledge receipt of those certain pledge agreements and pawn-tickets described in that certain contract executed on the 22 day of March, 1939, by and between the undersigned, and Sol Zemansky, Dave Zemansky and Abe Zemansky, individually, and doing business as the Provident Loan Association, State Loan Office, and Zemansky

(Testimony of Sol Zemansky.)

Brothers, in accordance with and pursuant to the terms of the said Agreement.

Dated: This 22 day of March, 1939.

SAM KLEINMAN

Sam Kleinman

Receipt

The undersigned, Sol Zemansky, Dave Zemansky and Abe Zemansky, individually, and doing business as the Provident Loan Association, State Loan Office, and Zemansky Brothers, hereby acknowledge that they have received from Sam Kleinman, the temporary custody of those certain pledge agreements and pawn-tickets described in that certain contract executed on the 22 day of March, 1939, by and between the undersigned and Sam Kleinman, for the limited purpose of using the same in accordance with the requirements of the aforesaid agreement.

It is understood that said pawn-tickets will be kept separate and apart from pawn-tickets belonging to the undersigned, and will not be commingled in any way with other pawn-tickets.

Dated: This 22 day of March, 1939.

SOL ZEMANSKY, DAVE

ZEMANSKY and ABE

ZEMANSKY, individually, and  
doing business as the

PROVIDENT LOAN ASSOCIA-  
TION, STATE LOAN OFFICE  
and ZEMANSKY BROTHERS.

By ABE ZEMANSKY

(Testimony of Sol Zemansky.)

Q. What was the basis for determining, if there ever was a basis for determining it, when a new contract would be made out?

A. I think Mr. Kleinman would say make a new contract and he had his dealings with my brother on that.

Q. Mr. Zemansky, whenever a new contract would be made out and those pledges had been given as security to Mr. Kleinman, and a customer would want to come in and redeem the pledge, would the same procedure be followed as was followed out on prior occasions?

A. The same procedure.

Q. And what was done with the money?

A. It went in the cash drawer.

Q. For what purpose was the money used?

A. In the general line of business.

Q. Was any of that money on the new contracts ever used or set aside in a separate account?

A. I don't recall anything like that.

Q. Was anything ever said to Mr. Kleinman as to where [92] that money was going?

A. Not by me.

Q. Did Mr. Kleinman ever make any of the redemption of pledges that had been given to him as security?

A. I believe he did.

Q. What did he do with the money when he made those redemptions?

A. It went into the cash drawer.

Q. So whether Mr. Kleinman made the redemp-



(Testimony of Sol Zemansky.)

tion or any other loan clerk, the same procedure was followed, is that correct?

A. That is correct.

Q. Now, do you recall when it was that an attachment was levied on the business by Simons' Lunch Room people?

A. Sometime the early part of March.

Q. That was after the first security had been given to Mr. Kleinman, is that correct?

A. Yes. [93]

Q. By Mr. Chotiner: Mr. Zemansky, did you ever tell Mr. Kleinman that the Simons' Lunch Room people were going to sue and attach?

A. No.

Q. Was that subject ever discussed with Mr. Kleinman at any time prior to the attachment?

A. No.

Q. At any rate, did you discuss with Mr. Kleinman the fact that you owed the Simons' Lunch Room people some money?

A. I don't recall it.

Q. Did you tell Mr. Kleinman that Judge Pacht was keeping after you, in substance and effect, to make payments to the Simons' Lunch Room people?

A. That was after Mr. Kleinman had secured the collateral.

Q. How soon after was it as you can best recall it now?

A. Well, it would be immediately after the attachment.

(Testimony of Sol Zemansky.)

Q. And when was the attachment made?

A. Sometime the early part of March.

Q. Just as soon as the attachment was levied, there was a representative of the Sheriff's office in the Provident Loan Association, is that correct? [94]

A. That is correct.

Q. Mr. Kleinman was present also, is that right?

Mr. Wolver: That is objected to, your Honor, as purely leading and suggestive.

The Referee: Well, it does not do any harm to see what the facts are.

Mr. Wolver: If the witness testifies we have the facts. If counsel testifies the witness merely acquiesces and some facts might be true. The penalty of leading questions is that we have two or three statements.

The Referee: All right. Mr. Chotiner will try to get the facts and not ask leading questions.

Q. By Mr. Chotiner: Was Mr. Kleinman present at the time the representative of the Sheriff's office was there?

A. I believe he was in San Francisco at the time of the attachment. He came down afterwards.

Q. Did you have a conversation with Mr. Kleinman regarding the matter of an attachment levied by the Simons Lunch Room?

A. Yes, I talked to him long distance and he came back from San Francisco.

Q. After he came back from San Francisco,

(Testimony of Sol Zemansky.)

after your long distance call, did you have another conversation with him regarding it?

A. Several of them.

Mr. Wolver: May we at this time have the foundation. [95]

Q. By Mr. Chotiner: Where did the conversation take place?

A. I believe it was in the office of the Provident.

Q. How soon after the attachment was levied was it?

A. I believe it was within a day or two.

Q. Who was present?

A. That I don't recall.

Q. Do you recall anyone else was present at all?

A. I can't recall.

Q. What was the conversation?

A. It was in reference to getting the attachment removed.

Q. Tell us what you said and what Mr. Kleinman said.

A. Well, it is a very difficult thing just to explain what took place, except we went over to Judge Pacht's office, if I recall it, to see what we could do in the way of getting the attachment removed.

Q. Did Mr. Kleinman go with you?

A. I think he was along.

Q. Was there a conversation held with Judge Pacht in the presence of Mr. Kleinman.

(Testimony of Sol Zemansky.)

A. I believe there was.

Q. What was that conversation?

A. That was in reference to getting the attachment removed.

Q. What was said by the various parties? [96]

A. I can't recall what was said. We went there for one purpose, to get the attachment removed.

Q. Can you tell us in substance and effect what each of the parties stated?

A. Naturally they said they were not going to take it off.

Q. What did you or Mr. Kleinman say, if anything?

A. We tried to work out a deal to get them to remove the attachment.

Q. Did Judge Pacht ask you in the presence of Mr. Kleinman for the payment of the money that was owed to Simons Lunch Room?

A. I don't recall whether he did.

Q. Judge Pacht had been after you for some time to get you to pay that account, hadn't he?

Mr. Wolver: That is objected to as being incompetent, irrelevant, and immaterial.

The Referee: Sustained. I think it may be assumed that they ran an attachment and they asked for their money.

Q. By Mr. Chotiner: Did you say anything to Judge Pacht in the presence of Mr. Kleinman as to your ability to pay the money at that time?

A. He asked for it and I wasn't able to give it to him, so there wasn't much more to be said.



(Testimony of Sol Zemansky.)

Q. After that conversation took place there in Judge Pacht's office, did you have another conversation with Mr. [97] Kleinman, or with someone else in the presence of Mr. Kleinman, in which the subject of the Simons Lunch Room attachment was discussed?

A. Mr. Kleinman and myself had several conversations about that.

Q. What were those conversations?

A. Well, to try to work out a deal, how we could get that attachment removed.

Mr. Dienstag: May I ask for the time of those conversations and the place or places where they took place, and other persons present?

The Referee: If the witness is able to do it. Obviously, there was such a close association between these two gentlemen that I doubt whether the witness with any degree of accuracy could recite exactly where each specific conversation took place. The Court understands the record to be that all of these conversations took place more or less immediately after Mr. Kleinman returned from San Francisco while the attachment was pending.

Mr. Dienstag: I am particularly interested in the parties present, if the witness remembers. I think he should state whether or not he remembers.

The Referee: Perhaps we can clear it up along this line. How long was the attachment on, Mr. Zemansky?

A. I believe it was on there for two or three days.

(Testimony of Sol Zemansky.)

Q. Two or three days. During that time, how many [98] times would you say you talked to Mr. Kleinman about it?

A. Probably had about three conversations.

Q. And outside of the Provident Loan office and Judge Pacht's office, do you recall any other place now where you met him and talked to him?

A. I don't recall.

Q. Don't you recall any other place? Of course, you walked back and forth, didn't you, on the street, going from your place to Judge Pacht's office?

A. That is right.

Q. Do you remember at any of those conversations that we are now talking about, anyone else participating in the conversation or being present?

A. I don't recall who was present other than Mr. Kleinman and myself.

Q. Were any of your brothers in on it?

A. I don't believe they were.

Q. You don't think they were. Or any of your employees of Provident Loan or any other associates of yours of Provident Loan?

A. I can't recall any other one.

Q. You can't recall anyone else.

A. No.

The Referee: I think that is the difficulty. The witness can't give us the foundation.

Q. By Mr. Chotiner: Now, will you tell us what the [99] conversations were with Mr. Kleinman?

A. We are right back where we were before.

(Testimony of Sol Zemansky.)

We were trying to work out a deal, how to get the attachments removed.

Q. Did you finally come to some conclusion with Mr. Kleinman regarding that subject matter?

Mr. Wolver: That is objected to as calling for the conclusion of the witness.

Q. By Mr. Chotiner: Mr. Zemansky, can you tell us now in substance or effect what you said and what Mr. Kleinman said?

A. We decided that the only way we were going to get anywhere was to try and secure them.

Q. What did Mr. Kleinman say about that subject, if anything?

A. He thought that was probably the best thing to do.

Q. Did you discuss with Mr. Kleinman where you were going to get the security to give the Simons Lunch Room people? A. Yes.

Q. Where was that discussion held?

A. That was in the office of the Provident Loan Association.

Q. When was that?

A. During the period of time the attachment was on the place. [100]

Q. What was said regarding that subject——  
(Interruption)

The Referee: Go ahead.

The Witness: What was the question?

Q. By Mr. Chotiner: You are being asked now what was said about the manner in which you would secure Simons?

(Testimony of Sol Zemansky.)

A. We would secure them by those loans.

Q. Was anything said as to what loans were going to be used?      A. Yes, there was.

Q. What was said?

A. Mr. Kleinman said we could use some of his loans in order to expedite the matter and get the Sheriff out of the place.

Q. Did you do that?

A. I believe that was done.

Q. By Mr. Chotiner: Had you ever asked Mr. Kleinman's advice regarding financial matters concerning the company prior to the giving of the first security to him? [101]

Mr. Dienstag: That is objected to on the ground that it has been asked and answered once before, and the witness stated he had not discussed the financial affairs with Mr. Kleinman.

The Referee: Overruled. Proceed.

(Question read.)

A. No. [102]

Q. Did he assist in the handling of the pledges there during the consummation of the transaction whereby security was given to the Simons Lunch Room people?      A. I think he did.

Q. What did he do, if anything?

A. He merely assembled the loans to the amount that we had agreed on, that Simons were to be secured with.

Q. And what did he do in the assembling of the loans?



(Testimony of Sol Zemansky.)

A. He took the loans out of the drawers in the vault and put them in a separate drawer.

Q. Where did Mr. Kleinman go, if any place?

A. I imagine he went home. [103]

Q. While this transaction was being consummated, did he come into the same room where you and Judge Pacht were?

A. No, he was in the front office, in a different office where the Simons were.

Q. At the time you went to Judge Pacht's office, the first time there, when you say Mr. Kleinman accompanied you, was the subject matter discussed in Mr. Pacht's office regarding the Gans account?

A. I am not certain as to that.

Q. Did you ask Mr. Kleinman to accompany you to Judge Pacht's office?      A. Yes.

Q. When you asked him that what did Mr. Kleinman say, if anything?

A. He said he would be pleased to go with me.

Q. Why did you ask Mr. Kleinman to accompany you?

Mr. Wolver: That is objected to as calling for the conclusion of the witness.

The Referee: Overruled.

A. Well, he was associated with me in the business and I thought I could rely on him for some suggestion he might have to offer.

Q. Why did you ask him—(withdraw that)

When you had your telephone conversation with

(Testimony of Sol Zemansky.)

Mr. Kleinman, did you ask him to come back to Los Angeles?      A. Yes. [104]

Q. What did Mr. Kleinman say to that, if anything?

A. He said, "Why don't you do the same with the Simons as you have done for me?"

Q. How was that?

A. I thought he said, "Why don't you do the same with Simon as you have done for me?" but I am not certain as to that.

Q. Why did you ask Mr. Kleinman to come back to Los Angeles?

A. I thought he might be able to assist me financially and we could straighten the matter out.

Q. Had you discussed this subject matter of the Simon attachment with any other employee of the business?

Mr. Wolver: That is objected to as being incompetent, irrelevant, and immaterial.

The Referee: Overruled.

A. Had I discussed it, no.

Q. By Mr. Chotiner: Did you ask any other employee to go with you to Judge Pacht's office?

A. No.

Mr. Wolver: That is objected to on the same ground.

The Referee: I don't think so. Overruled.

The Witness: No.

Q. By Mr. Chotiner: Had you asked any other

(Testimony of Sol Zemansky.)  
employee for any suggestions as to how to handle the situation?

Mr. Wolver: The same objection, your Honor.

[105]

The Referee: Overruled.

A. No.

Q. By Mr. Chotiner: Now, did you ask Mr. Kleinman to be at the Provident Loan Association office the night that the security was given to the Simons Lunch Room people?

A. I can't recall that.

Q. Can you relate to the Court the circumstances under which Mr. Kleinman came over to the Provident Loan Association that night?

A. I can't recall.

Q. Can you recall whether he volunteered to come over or whether you asked him to come?

A. I could not recall that.

Q. Did anyone ask him in your presence to be there?

A. Not that I know of.

Q. Did Mr. Kleinman remain there until the transaction was completed with Judge Pacht?

A. I don't recall. [106]

Q. By Mr. Chotiner: Mr. Zemansky, did you ever ask Mr. Kleinman for any suggestions as to how you were going to work out your financial problem at the Provident Loan Association?

Mr. Wolver: That is objected to, your Honor, as assuming a fact not in evidence, that there was a financial problem.

(Testimony of Sol Zemansky.)

The Referee: Overruled.

Mr. Wolver: Also asked and answered.

The Referee: Overruled.

The Witness: What was the question?

(Question read.)

A. No.

Q. By Mr. Chhotiner: Did you ever ask his advice regarding that subject matter?

Mr. Wolver: The same objection.

The Referee: Overruled, [108]

A. No. [109]

The Referee: Overruled. The question, Mr. Zemansky, is who first broached the idea of Mr. Kleinman going to the Union Bank and borrowing money, which in turn he would loan to you?

A. I believe Mr. Kleinman told me he would be able to get some money at the Union Bank.

Q. By Mr. Chotiner: When was it that he first told you he could get some money at the Union Bank?

A. It is very hard for me to fix the date.

Q. Well, was it before January of 1939, or after?

A. It is very hard for me to fix the date.

Q. Do you recall, Mr. Zemansky, for the purpose of refreshing your memory, was this money borrowed at the Union Bank sometime in March of 1938?

A. There is only one way I would be able to know, and that is by the bookkeeper.



(Testimony of Sol Zemansky.)

Q. Don't you recall at this time when it was that you borrowed some money from Mr. Kleinman, on which you were [110] only paying seven per cent interest?

A. I think the date of the note would fix it; that was when he got the money.

Q. Yes, but can you tell us what year that was in?

A. I don't know what year it was.

Q. Isn't it true that you borrowed \$2400 from Mr. Kleinman, which he told you he obtained from the Union Bank in March of 1938?

A. The only way I would be able to identify the transaction is the seven per cent interest was the money that is presumed to have come from the Union Bank. [111]

Q. By Mr. Chotiner: Can you tell us approximately how long before the attachment was levied that Mr. Kleinman told you he was borrowing money at the Union Bank?

A. The transaction in particular was, according to the attorney for Mr. Kleinman, made in 1938, of \$24,000.

Q. Now, then, at the time when the money was borrowed at the Union Bank, had there been a discussion with Mr. Kleinman regarding the condition of the cash drawer and available money to make loans with?

A. I don't recall any such conversation.

(Testimony of Sol Zemansky.)

Q. Why was the money borrowed at the Union Bank, if you know?

A. I assume I must have told him that we were short of money and he arranged to get the money for me. [112]

The Referee: Yes, all right. Mr. Zemansky, you recall the time, don't you, when Mr. Kleinman said he would go to the Union Bank and borrow some money and loan it to you? A. That is correct.

Q. Did that come about as a result of just one conversation with Mr. Kleinman, or was it a series of conversations over a period of time?

A. Well, as a rule, every time I asked Mr. Kleinman for anything he always gave whatever I asked, so it wouldn't take many conversations. [114]

Q. Well, how did it start?

A. Well, I amagine there was some rush need for the money. I said, "Sam, can you get me some money?" and he said, "I will see what I can do," and went down and got the money. I don't recall what I said I needed the money for.

Q. You don't remember? A. No.

Q. You mean to tell the Court you don't now recall any of the details of that conversation, except that Mr. Kleinman said he would go and get the money and loan it to you?

A. That was the way it was done.

Q. How often did Mr. Kleinman go and borrow money from some other source other than his own finances, and loan it to you?

(Testimony of Sol Zemansky.)

A. He loaned me a considerable amount of money at different times. I wouldn't know where he procured it except this one time when he went to the Union Bank to borrow it; otherwise, I never questioned him where he got the money. [115]

Q. You don't remember when it was?

A. It was prior to the date of the execution of that note.

Q. What is the date of that note, gentlemen, does anybody know?

Mr. Horn: The note of March, 1938, I believe.

Mr. Chotiner: March 25, 1938.

The Referee: Have you the note, gentlemen? You ought to have it. It is a canceled note, isn't it?

Mr. Laugharn: March 25, 1938.

Mr. Wolver: The note was \$19,000, according to that exhibit; then July 26th, \$3,000; March 26th, another \$2,000 note; calling your attention to Trustee's Exhibit No. 3, lines 29 to 30, inclusive.

The Referee: Was this item of \$19,000 on March 25th, 1938, a Union Bank transaction?

A. I couldn't say definitely about that.

Mr. Chotiner: That is one that bore seven per cent interest.

The Witness: All seven per cent interest was supposed to be from the Union Bank, as Mr. Kleinman did not want to charge me any more interest than what the Union Bank had been charging him. That is how I can identify the money. [116]

The Referee: I think we ought to complete our



(Testimony of Sol Zemansky.)

record. Trustee's Exhibit 6 by reference is a copy of the contract dated March 22, 1939, covering a loan of \$2,510, attached to the Kleinman claim, and then there is the stipulation that all subsequent contracts are in the same form. I think we should read into the record a list of the dates and the amounts of the subsequent contracts.

Mr. Wolver: Isn't that in the record, in our proof [117] of claim?

The Referee: I would like to have it stipulated that the items in your proof of claims are correct. Perhaps counsel will be unable to do that for the moment on account of that \$3,750. We are simply identifying the form of the contract. If there is no objection, I will read it into the record now, and then the reporter will have it.

Mr. Chotiner: We can check it against my list as we go along.

The Referee: I am going to read from page 3 of the claim. All subsequent contracts after that of March 22nd in the sum of \$2,510 are these: March 28th, \$2,000; March 31st, \$2,200; April 5th, \$2,000; April 3rd, \$2,500; April 8th, \$2,000; April 11th, \$2,200; April 13th, \$2,100; April 15th, \$2,200; April 18th, \$2,500; April 21st, \$2,000; April 24th, \$1,500; April 28th, \$2,500; May 2nd, \$1,200; May 9th, \$3,700; May 13th, \$2,000; May 25th, \$3,400; June 2nd, \$3,750; June 7th, \$3,400; June 23rd, \$3,900; June 28th, \$4,600; July 5th, \$2,400.

Q. By Mr. Chotiner: Mr. Zemansky, prior to



(Testimony of Sol Zemansky.)

the giving of the security to Mr. Kleinman, did you discuss your business with him?      A. Yes.

Q. How often would you say that conversations took place? [118]

A. That is something I wouldn't know, but I had several conversations with him.

Q. And extending what period of time?

A. Oh, probably over a period of six or seven months.

Q. Prior to the time he obtained his security?

A. Yes.

Q. And who was present at those conversations?

A. Myself and Mr. Kleinman.

Q. Was anyone else ever present?

A. I don't recall.

Q. And where did those conversations take place?      A. At the Provident.

Q. What were the conversations?

A. Just that we probably could do more business if we had more money.

Q. What did Mr. Kleinman say regarding that?

A. There wasn't anything said.

Q. Was that the extent of the conversation that you had with him on each one of those occasions?

A. Well, that is about the substance of it.

Q. What was your purpose in telling that to Mr. Kleinman?

Mr. Wolver: That is objected to, your Honor, as calling for the concussion of the witness.

The Referee: Sustained.

(Testimony of Sol Zemansky.)

Q. By Mr. Chotiner: Why did you tell that to Mr. [119] Kleinman?

Mr. Wolver: The same objection.

The Referee: Sustained, unless you told Mr. Kleinman why you said those things; did you do that, did you explain that?

A. Yes, I told him we were refusing loans.

Q. By Mr. Chotiner: What did you tell him when you said you were refusing loans?

A. We could make more loans if we had more money.

Q. Was that the extent of the conversations regarding the subject of your refusing loans?

A. Well, you could talk a long time, but that was the principal substance of it.

Q. When you talked a long time, I am trying to find out, Mr. Zemansky, what was said as you can best now recall it.

A. Well, nothing other than if we had some more money we could make loans; we had to refuse loans that were coming in, that were being offered.

Q. Was anything said as to why you didn't have sufficient money to make loans?

A. No, there wasn't anything said at the time, that I recall.

Q. Did Mr. Kleinman ask you why you didn't have sufficient money to make more loans?

A. I don't recall that he did. [120]

Q. Was that subject matter discussed in any fashion whatsoever with him?

(Testimony of Sol Zemansky.)

A. No, nothing other than we were refusing business, it was really tood bad we had to refuse business when we had such excellent opportunities to get the merchandise.

Q. At the time those conversations took place, was Mr. Kleinman still selling jewelry that was obtained by failure of redemption? A. Yes.

Q. And were there very many cases like that during that period of time where customers failed to redeem their property?

A. Well, there was always a certain amount of unredeemed pledges.

Q. Did that run to any great volume?

A. I couldn't say exactly; it was considerable.

Q. You say considerable; what do you mean?

A. I couldn't fix it in dollars and cents, because I don't know.

Q. When he would sell that jewelry, where did that money go?

A. That mone y was sent down to the Main Street store.

Q. Was anything said to Mr. Kleinman or did he say anything to you, after that money would come back in the cash drawer for the purpose of making loans, as to whether there was still sufficient money to make loans? [121]

A. I don't recall anything like that.

Q. At the time that you first gave security to Mr. Kleinman, did your liabilities exceed your assets?

(Testimony of Sol Zemansky.)

Mr. Wolver: That is objected to, your Honor, unless he knew at that time. I believe the rule is whether or not he knew it at that time, not at some subsequent discovery.

The Referee: We are not now asking about the effect on Mr. Kleinman. The question goes to the question of solvency at the time the security was given. I don't think it would make any difference whether the witness then knew the ratio of assets to liabilities, or whether he discovered them later. It was one of the difficulties of this business. Overruled. You may read the question.

(Question read.)

A. Well, I did not know.

Q. By Mr. Chotiner: Did you ever know?

A. Not until the bankruptcy.

Q. When you say "not until the bankruptcy," do you mean at the time you filed your petition for arrangement under Chapter 11?

A. That is correct.

Q. Was that the first time that you ever knew that your liabilities exceeded your assets?

A. That was about the first time.

Q. When you say that was about the first time, can you [122] tell us when was the first time that you knew your liabilities exceeded your assets?

A. Well, I never knew definitely insofar as there was no way for me to determine it.

Q. When did you first find out that your liabilities exceeded your assets?



(Testimony of Sol Zemansky.)

A. The only time I could say was when people were pressing me for money, I didn't have enough money to pay them off at one time.

Q. When did they start pressing you for payment?

A. Probably six months or so of the petition.

Q. Did anyone press you for payment prior to six months before filing your petition?

A. Yes, I had people pressing me, but I was always able to take care of the obligations.

Q. Did you have sufficient money on hand with which to pay your obligations when they pressed you for payment?

Mr. Wolver: That is objected to as being incompetent, irrelevant, and immaterial, not proof of solvency or not. It is in the State Court, but not in this Court.

The Referee: Overruled.

Q. By Mr. Chotiner: Did you have money on hand to meet obligations when you were pressed for payment at a period prior to six months before the filing of your petition? A. Yes. [123]

Q. Where did you get the money to meet those obligations?

A. Just refused loans, refused loans in the loan department.

Q. By Mr. Chotiner: Do you know approximately what the total of your obligations was, of Zemansky Brothers, at the time the security was given to Mr. Kleinman? A. I didn't know.

(Testimony of Sol Zemansky.)

Q. Was it more than \$100,000?

A. I didn't know the figures at the time.

Q. Was it more than \$100,000, Mr. Zemansky?

A. I imagine it was more than \$100,000, because Mr. Kleinman's claim was \$100,000.

Q. Was it more than \$500,000?

A. I don't know the figures.

Q. Can you approximate what the figures were?

A. No, I could not approximate them. [124]

Q. By Mr. Chotiner: Did you ever discuss with your brother, David Zemansky, the amount of money that was being paid as interest to your creditors?

Mr. Wolver: That is objected to, your Honor.

Mr. Chotiner: It calls for a yes or no answer.

The Referee: Overruled. Did you talk to your brother Dave about the interest?

A. I don't recall.

(At this point, there was a discussion between Court and counsel as to adjournment.)

Mr. Chotiner: There is one thing, before I forget it, [126] and that is that the attachment by the Simons Lunch Room people was levied on February 27, 1939. [127]

By Mr. Chotiner:

Q. Mr. Zemansky, at the time you filed your petition under Chapter 11, you were aware of the total liabilities of Zemansky Brothers, isn't that correct?

A. Yes sir.

(Testimony of Sol Zemansky.)

Q. Was there any substantial change in the amount of those liabilities within a period of one year prior to the time you filed your petition?

A. I don't believe there was any material difference.

Q. And at the time the petition was filed, you were familiar with the amount of the assets of Zemansky Brothers, isn't that correct?

A. Approximately.

Q. Was there any substantial change so far as the assets were concerned within a year of the time prior to the filing of the petition?

A. I don't believe there was any material difference.

Q. And the schedule that you filed at the time or shortly after the time that the petition itself was filed, [128] is a true and correct statement of the liabilities and assets of Zemansky Brothers, isn't that correct?

A. That is correct.

Mr. Chotiner: At this time, if your Honor please, we offer as Trustee's exhibit next in order by reference the schedules of Zemansky Brothers.

The Referee: Only one set of schedules filed, any amendments or anything?

Mr. Laugharn: I don't think there were any amendments. If there were, we might include them.

Mr. Chotiner: Whatever there may be.

The Referee: Trustee's Exhibit 7 by reference, debtor's schedules and amendments, if any, as filed herein. [129]

Q. By Mr. Chotiner: I will now show you,

(Testimony of Sol Zemansky.)

Mr. Zemansky, a form here headed Provident Loan Association, which bears a number, 52,508, and ask you what that is and what it represents.

A. That is a document that we used at the Provident in taking in loans from a party.

Mr. Chotiner: Now, we ask that this be marked, if the Court please, as Trustee's exhibit next in order, in evidence. We will connect it up so far as the transaction is [130] concerned.

Mr. Dienstag: May I suggest that it be marked for identification rather than in evidence until the foundation is laid for putting it in?

The Referee: I understand this is merely a specimen.

Mr. Dienstag: Mr. Chotiner said in evidence.

Mr. Chotiner: Simply a specimen.

Mr. Dienstag: All right, no objection.

The Referee: However, let's establish the fact, if it is a fact, that this particular form was used at all times during the Kleinman transactions.

Mr. Chotiner: Very well.

Q. Mr. Zemansky, do you know when it was that the Provident Loan Association first started using this form of pledge ticket?

A. I believe it was sometime after March of 1939.

Q. After March of 1939?

A. You could verify the exact date by the printer, if you had to.

Q. Do you know what number was first used when you started using this form?



(Testimony of Sol Zemansky.)

A. I don't know. I believe it was 50,000, but I am not certain as to that.

Q. At any rate, after March of 1939, this was the form that was used whenever loans would be made to customers, is that correct? [131]

A. That is correct.

Q. Now, will you describe or tell the Court what was done with the portion entitled "Provident Loan Association," and which is the longer or the longest piece of this triplicate ticket?

A. That is the part of the ticket that the customer received.

Q. What was done with the two duplicate slips?

A. One was put on our file with the signature and the other, I believe, was turned over to Mr. Kleinman.

Q. When you say that the other one was turned over to Mr. Kleinman, when was it turned over to him with relation to the time that the pledge was made by the customer?

A. I am inclined to believe that when the pledges were turned over, the stub was turned over to him. and that followed every time there was a new bunch of loans accumulated.

Q. Was the stub turned over to Mr. Kleinman at the time that the pledge was made by the customer?

A. That is something I don't know, because I never handled the transaction directly with him.

Q. Who handled this transaction directly with him, if you know?

(Testimony of Sol Zemansky.)

A. I think it was Mr. Kravitz or my brother Abe. I am not sure which one.

Q. Where were the stubs kept at the place of business? [132]

A. In the loan department room.

Q. Where was that?

A. In the Provident, right in the room where the cash drawer was located.

Q. Then the stubs were placed in a box and kept in the cashier's cage, is that correct?

A. That is correct.

Q. Whenever the stubs were turned over to Mr. Kleinman, from what source did those stubs come, if you know?

A. I don't know.

Q. Then I take it that you didn't handle any of those transactions yourself, is that correct?

A. I handled none of them myself.

Q. The second duplicate stub was kept in your files there at the Provident, is that correct?

A. That is correct.

Q. Now, was there any segregation made of the stubs representing pledges that were given to Sam Kleinman for security from the other stubs which had not been given to Mr. Kleinman for security?

A. I think they were all kept together.

The Referee: Were there objections to this?

(No response.)

The Referee: This will be marked Trustee's Exhibit No. 8.

(Testimony of Sol Zemansky.)

Q. Now, prior to the time that you started using the [133] form of pledge ticket beginning with No. 50,000, what was the form of the pledge ticket?

A. Just the ticket and the stub.

Q. By Mr. Chotiner: Did the Provident Loan Association or Zemansky Brothers ever send any notice to any of its customers that their pledges had been given to Mr. Kleinman as security?

A. No.

Q. Were any notices of any kind sent to those customers regarding that subject matter?

A. No.

Q. Who made collection on those pledges?

A. Any of the employees of the place.

Q. Now, then, will you explain to the Court what would be done whenever a customer failed to redeem the pledge within the time allowed?

A. We would generally send them an interest notice at three months, then nine and twelve months, notifying them that interest was due, and at the end of that time, if [134] we needed the merchandise, we would pull out the pledge as expired.

Q. What do you mean when you say you pulled out the pledge?

A. Well, we would look at the stub, see that no interest was paid on the pledge, and took the pledge and put it in with the merchandise.

Q. Would you dispose of the pledge or pull the pledge as you have termed it without taking into consideration the ticket or the stub that you had?

(Testimony of Sol Zemansky.)

A. We always referred to the stub.

Q. What description, if any, was placed on the stub, so far as the merchandise was concerned?

A. Just the usual description of the article.

Q. Was any description of the merchandise placed on the customer's portion of the ticket?

A. No.

Q. Well, wasn't any description of any kind put on there?

A. Well, we would write on the customer's portion whether it was a watch or a ring. That's as far as we needed to describe it, except that it was an accurate description.

Q. Will you explain to the Court what you mean when a pledge has expired?

A. Well, at the end of 12 months the pledge was [135] forfeited to us. That is the way the law operated. We generally held them over 13 months ourselves.

Q. I will now show you an envelope and ask you what that is.

A. That is a container which we used to put the pledge in.

Q. And is that the form of envelope that was used by the Provident Loan Association during all of the time of your transactions with Sam Kleinman?

A. Wherever the article was not capable of being put in the bag, it was wrapped up in paper.

Mr. Chotiner: I ask that this be marked as Trustee's exhibit next in order in evidence.



(Testimony of Sol Zemansky.)

The Referee: Trustee's Exhibit No. 9.

Q. By Mr. Chotiner: What was the name that was used for that envelope?

A. Just a bag, that is all, a pledge bag.

The Referee: What do you call it?

The Witness: A pledge bag.

Q. By Mr. Chotiner: Will you describe or explain to the Court what the information that is printed on the pledge bag represents?

A. The first line would be the number of the pledge.

Q. From what would you obtain that number?

A. From the stub.

Q. That is the pledge ticket stub that you refer to? [136]

A. That is right. The second line is the amount of the loan.

Q. Where did you obtain that information?

A. From the stub. The third line would be the interest, and on this line would be the date the loan was taken out.

Q. When you say "on this line," you are referring to the fourth line; it has no printing on it?

A. That is correct.

Q. What was placed on that line?

A. The date of the pledge.

Q. Where did you obtain that information?

A. From the stub.

Q. Would you dispose of the contents of the pledge bag without considering the stub?

A. No.

(Testimony of Sol Zemansky.)

Q. Would you dispose of the stub without taking into consideration the pledge bag and the merchandise contained in it?

A. I don't quite get your idea, disposing of the stub.

Q. Well, would anything be done with the stub, so far as canceling without considering the pledge bag?

A. The only time the stub would be canceled would be in event of a redemption.

Q. When that would happen, what would you do with the pledge bag and its contents?

A. Deliver it to the customer. [137]

Q. Now, after the security had been given to Mr. Kleinman, did all of the clerks of the Provident Loan Association have access to those pledges?

A. I believe so.

Q. Well, if a customer would come in and want to pay interest or redeem a pledge, which was one that had been given to Mr. Kleinman for security, were any of the loan clerks allowed to handle the transaction?      A. Yes.

Q. Do you know Mr. Leo Kravitz?

A. Yes.

Q. He was a loan clerk there, is that correct?

A. That is correct.

Q. Do you know Mr. Robert Sego?

A. Yes.

Q. Was he a loan clerk at the Provident?

A. Yes.

Q. Mr. Abraham Zemansky was your brother?

(Testimony of Sol Zemansky.)

A. Yes.

Q. Was he working there at the Provident Loan Association?           A. Yes, he was.

Q. Did all of those individuals just named, Leo Kravitz, Robert Sego, and Abraham Zemansky handle any of the pledges, insofar as the payment of interest or redemptions were concerned, when those pledges had been [138] given to Mr. Kleinman as security?           A. Yes sir.

Q. Did you handle any of those?

A. I don't believe I ever handled any of them.

Q. Whenever any of the clerks would go into the vault for the purpose of handling one of the pledges, for the purpose of receiving interest payments or redemptions, did Mr. Kleinman go with the clerk at the same time?

A. I don't believe so.

Q. Did Mr. Kleinman have a key to the boxes which contained the pledges that had been given to him as security?

A. Why, I believe that worked this way, Mr. Chotiner. There was a key that unlocked a certain section of all the boxes, and that key was in a drawer, and they would have access to the vault and have access to that key. They picked up the key and went in and unlocked the boxes.

Q. Did all of the clerks have access to the safe key?

A. All the loan clerks had access to it.

Q. That key was kept in this drawer for the use of all the loan clerks?

(Testimony of Sol Zemansky.)

A. Some of them had it on their key ring, but there was an extra key in the drawer.

The Referee: Let us have some evidence at this time, if you don't mind, as to who had access to the vault itself.

Q. By Mr. Chotiner: Who opened the vault in the [139] morning, Mr. Zemansky?

A. Mr. Kravitz.

Q. Mr. Kravitz. Was Mr. Kleinman required to be present at the time the vault would be opened?

A. No.

Q. Was he present whenever the vault would be opened?

A. He had no regular hours in the morning when he would get there.

Q. Did anyone else have access to the opening of the vault?

A. It was generally opened by Mr. Kravitz.

Q. Did anyone else have access to the combination?

A. We all had the combination of the vault.

Q. When you say "all," you refer to whom?

A. The three brothers.

Q. Did Mr. Kleinman have the combination to the vault? A. I don't believe he did.

Q. When was the first time that the subject of giving security to Mr. Kleinman was discussed?

A. I believe it was the latter part of 1938 or the early part of 1939.

Q. Did Mr. Kleinman tell you why he wanted security?



(Testimony of Sol Zemansky.)

A. He said he was obliged to go away on a vacation, if I recall, and would like to be secured. That is the substance of the conversation.

Q. Did he give any other reason as to why he wanted [140] security?

A. Yes, I believe there was another reason.

Q. What reason did he give?

A. I think he said at that time he thought he would be in a position to secure some more money at the Union Bank at that time.

Q. Did Mr. Kleinman say anything about the fact that he would feel better about it if he had security?

A. Yes, he said he would feel better while he was away on his trip.

Q. What did he say in regard to that subject matter, if there was anything else said?

A. That was just about all that was said.

Q. Did Mr. Kleinman say anything as to why he would feel better about it if he had security?

A. He didn't say.

Q. Did you say anything to him about whether it was necessary for him to have security?

A. No, I don't believe I did. [141]

Mr. Chotiner: So there won't be any doubt about the record, at the time you first discussed this subject with Mr. Kleinman, did you have any other creditors? A. Yes.

Q. There were quite a number of them?

A. Yes.

(Testimony of Sol Zemansky.)

Q. By Mr. Chotiner: Did any of the other creditors have security at that time? A. Yes.

Q. Which creditors?

A. I believe Wulfson and the Citizens National Bank. [142]

Q. By Mr. Chotiner: Mr. Zemansky, did Mr. Kleinman ever say anything to you regarding the subject matter of the Wulfson and the Citizens Bank having security?

Mr. Dienstag: I object on the ground that it has been asked and answered.

The Referee: Overruled. Read the question.

(Question read.)

A. I don't recall any conversation about it.

Q. By Mr. Chotiner: Did Mr. Kleinman know that the Wulfsons and the Citizens Bank account were secured, if you know?

Mr. Wolver: That is objected to as a conclusion of the witness.

The Referee: He said, if you know. Overruled.

The Witness: If I knew?

Mr. Chotiner: Will you read the question? [143]

The Referee: Let us put it this way. Do you know of your own knowledge that Mr. Kleinman knew of the security held by the Wulfsons and the Citizens National Bank?

Mr. Wolver: May our objection be noted to the Court's question on the same ground, that it calls for the conclusion of the witness?

The Referee: Certainly.

Mr. Wolver: And on the ground that one man

(Testimony of Sol Zemansky.)

can never know what another man knows unless he has examined an instrument or participated in the conversation or has discussed with him.

The Referee: Overruled. Do you understand the question?

The Witness: Yes, I understand the question. He may have known about those pledges.

Mr. Wolver: I am going to ask that that be stricken on the ground it is a conclusion and conjecture.

The Referee: Yes, it may go out. Proceed.

Q. By Mr. Chotiner: Where were the pledges kept that had been given to Wulfson and the Citizens Bank as security?

Mr. Dienstag: That is objected to on the ground that it is incompetent, irrelevant, and immaterial, and has no bearing upon the issues in this case.

The Referee: Overruled.

The Witness: The Citizens National Bank pledges were [144] kept at the Citizens National Bank branch between 7th and 8th on Hill.

Q. By Mr. Chotiner: Where were the Wulfson pledges kept?

Mr. Wolver: The same objection.

The Referee: Overruled.

A. The Wulfson ones were originally, I believe, at the 5th and Spring Street Branch, and later transferred to the 7th and 8th Street Branch on Hill Street, of the Citizens National Bank.

Q. By Mr. Chotiner: Whenever a customer would come in the Provident Loan Association and

(Testimony of Sol Zemansky.)

wanted to redeem a pledge that had been given either to Wulfson or the Citizens Bank as security, what was the procedure followed in effecting that redemption?

Mr. Wolver: That is objected to as being incompetent, irrelevant, and immaterial, and not binding on the claimant.

The Referee: Overruled. I take it, this is all preliminary.

Mr. Chotiner: Yes, we will connect it up with Mr. Kleinman.

The Witness: They would take the amount of the money——

Q. By Mr. Chotiner: Who would take the amount of the money?

A. The loan clerk Mr. Kravitz generally would handle those transactions, and go down and pay the Citizens Bank [145] the money, receive the pledge and then deliver it to the customer.

Q. Did Mr. Kleinman ever go to the Citizens Bank and handle one of those redemptions?

A. I don't believe he did.

Q. Would you say definitely that he did or did not?

Mr. Wolver: That is objected to, your Honor, as being incompetent, irrelevant, and immaterial, and cross-examination of the questioner's own witness.

The Referee: Overruled.

Mr. Wolver: Leading and suggestive.

The Referee: Overruled.



(Testimony of Sol Zemansky.)

A. I can't recall of him ever having gone and getting any of those loans.

Q. By Mr. Chotiner: Did you ever have a discussion with Mr. Kleinman regarding the subject matter as to where the pledges were to be kept that were going to be given to Mr. Kleinman as security?

A. Yes, there was a conversation with reference to that.

Q. What was that conversation?

A. Mr. Kleinman, I believe, wanted a safe in the front office that he occupied to keep the loans in there. That was one of his ideas.

Q. What did you say to that?

A. I told him I didn't believe that it was necessary. [146]

Q. Give us the rest of the conversation, if there was any.

A. That is about all there was to the conversation.

Q. During that conversation, was there anything said about the Wulfson and Citizens Bank pledges being kept at the Citizens Bank?

Mr. Wolver: That is objected to as being compound and also already asked and answered.

The Referee: Overruled.

A. I don't recall any conversation about that.

Q. By Mr. Chotiner: Directing your attention to February 24, 1939, and to Trustee's Exhibit No. 4, being the contract dated February 24, 1939, are you familiar with that contract?

A. Partially.

(Testimony of Sol Zemansky.)

Q. Will you explain to the Court where you were when that contract was signed?

A. In San Francisco.

Q. And who prepared that contract, if you know?

A. I believe it was prepared by Mr. Dienstag.

Q. And had the contract been signed by anyone prior to your signing it?           A. No.

Q. And who presented the contract to you in San Francisco?

A. Well, I believe I received a call one morning [147] when I was at the St. Francis Hotel. Mr. Dienstag phoned me and told me he was in town and wanted to know if I would come down to his office, so I went down to his office and signed the contract.

Q. Did Mr. Dienstag tell you where he had just come from?

A. Well, he had been in Los Angeles.

Q. Did he tell you that?

A. I saw him the day before in Los Angeles.

Q. When you saw Mr. Dienstag in San Francisco, did you have any conversation with him regarding the signing of the contract?

A. No, there wasn't any conversation.

Q. Wasn't anything said?

A. He just asked me to drop down to his office and sign the contract, and I read it through and I signed it.

Q. Did you have any conversation with Mr. Dienstag in Los Angeles prior to signing the contract in San Francisco?           A. Yes, we discussed it.

(Testimony of Sol Zemansky.)

Q. Who was present at that conversation?

A. I don't recall.

Q. Would you say there were other people present besides yourself and Mr. Dienstag?

A. I would say Mr. Kleinman, Mr. Dienstag and myself.

Q. What was that conversation?

A. He just merely told me he was preparing the contract. [148]

Q. Was there anything said regarding the subject matter of Mr. Kleinman obtaining the security or otherwise he would not have left his money there?

Mr. Wolver: That is objected to as leading and suggestive. We have no objection to the conversation, but where counsel——

The Referee: It is leading. It will be sustained.

Q. By Mr. Chotiner: Did Mr. Dienstag demand that the contract be executed giving security to Mr. Kleinman?

Mr. Wolver: That is objected to, your Honor, on the ground that it is a conclusion of the witness, also assuming facts not in evidence, that he demanded.

The Referee: Mr. Zemansky, don't you remember the substance of that conversation? It was a rather unusual conversation, deciding the course of your business, wasn't it?

A. The whole thing was that they asked for security, they drew the contract and I signed it. That's about the substance of it.

Q. Of course, Mr. Chotiner is trying to find out from you what, if anything, they said as to why they



(Testimony of Sol Zemansky.)

wanted the security. Isn't that what you are trying to bring out at this time?

Mr. Chotiner: Yes, your Honor.

Q. By the Referee: Can't you reflect a bit and see if you cannot remember what, if anything, they said on that [149] subject?

A. I believe I explained to Mr. Kleinman at the time about the contract for security. He said he wanted to go away on a vacation and he would feel a lot better if he were secured. That's about the whole substance of the conversation.

Q. Well, now, we are trying to find out what else, if anything, was said on the subject at the time Mr. Dienstag sat in on the conversation in Los Angeles.

A. Other than he was going to prepare the contract, he told me what he had in mind, and that on that basis Mr. Kleinman would be able to procure more money at the Union Bank.

The Referee: All right. Proceed.

Q. By Mr. Chotiner: Mr. Zemansky, do you know whether Mr. Dienstag is a relative of Mr. Kleinman?

Mr. Wolver: We will stipulate that he is the son-in-law of Mr. Kleinman, that he is married to the daughter of Mr. Kleinman.

Mr. Chotiner: The materiality will be evident very shortly.

Q. Did Mr. Dienstag, in this conversation with you in Los Angeles prior to the contract being executed, have a conversation with you in which the operation of the business was discussed in any way?



(Testimony of Sol Zemansky.)

A. I don't recall. [150]

Q. Was there any conversation regarding whether you would be able to conduct it, stay in business?

A. I don't recall any conversation.

Q. Now, the fact that you are smiling at this time, Mr. Zemansky, does that refresh your memory as to any of that subject matter being discussed?

A. No.

Q. Was anything said at that time about Zemansky Brothers confining their efforts to the pawnbroker business?

A. I can't recall anything like that.

Q. As a matter of fact, you did discuss with Mr. Dienstag, or at least a conversation was held regarding whether or not the Provident Loan Association could continue to exist in business and make a profit in view of its financial condition?

Mr. Wolver: That is objected to as leading and suggestive. It is not a question asking for any statement, but asking for information.

Mr. Dienstag: Further, and an attempt to impeach his own witness. The witness has just stated he didn't remember that conversation. Mr. Chotiner is insisting that he did.

Mr. Chotiner: If the Court please, I think it must be apparent to the Court that here is a situation where people were engaged in the pawnbroking business, and while it is true there were two creditors, Wulfson and the Citizens [151] Bank, that had security, it is apparent it was an unusual situation where a person, a creditor to the extent of approxi-

(Testimony of Sol Zemansky.)

mately \$100,000, and security was being asked for, in a very casual way would state that he was going away on a vacation and would feel better about it if he had security. Now, frankly and quite obviously, I think it must be apparent that there must have been some definite object in this matter, particularly since Mr. Zemansky said the subject was first broached in the latter part of 1938 or the first part of 1939, and the contract is not executed until February 24, 1939. Now, obviously, there must have been some discussion regarding the situation rather than just a mere casual observance that they wanted security and were going to get it, particularly since Mr. Kleinman was more than, you might say, just loan clerk. He had access to the cash book at all times and the cash drawer and had talked with Mr. Zemansky that there was not sufficient money with which to make loans; when big loans were requested they did not have enough money to make them; that he had gone to the Union Bank and had borrowed money, which money had found its way into the business. Surely, there must have been more conversation, and I think, very frankly, the witness' memory is a little hazy at this time. I think it is quite apparent that we have the right to ask leading questions where a witness appears to be an unwilling witness on very important matters. [152]

Mr. Dienstag: As to the last part of Mr. Chotiner's statement, that the witness is unwilling, I don't know whether that is true or not. I haven't examined

(Testimony of Sol Zemansky.)

this witness before this time to find out whether he is unwilling. It appears to me the only basis for Mr. Chotiner's statement is that this witness is not telling Mr. Chotiner what Mr. Chotiner wishes this witness to tell in order to satisfy Mr. Chotiner. I say to your Honor that it is not the fault of the witness or that he is an unwilling witness. The witness is simply stating what happened and what he remembers. Mr. Chotiner has made several other statements in the course of his discussion to your Honor, a good many things which are not in evidence here, and painting a picture that Mr. Chotiner fails to bring out by evidence in this case, and stating that because he is unable to bring it out that he is having difficulty. I submit that the witnesses who are offered here by the Trustee, or you may say the plaintiff, shall not be led, shall not have the words placed in their mouths, simply because the attorney for the Trustee wishes they would state certain facts.

Mr. Chotiner: I am going to represent to the Court at this time, that I had conferred with Mr. Zemansky on numerous occasions prior to this litigation now before the Court, and that the results of those conferences with him have been transcribed into a prepared statement, which I have, and which very frankly I am using for the purpose of [153] interrogating Mr. Zemansky. I might represent to the Court at this time that Mr. Zemansky has given me more information that he is now giving from the witness stand on the particular subject as to whether



(Testimony of Sol Zemansky.)

Mr. Kleinman knew the condition of the business there and the method and the manner in which that security was given to him.

The Referee: Gentlemen, the purpose of all of the rules of evidence is to bring out all of the facts in a proper and legitimate manner. I myself am convinced that Mr. Zemansky, who is now on the stand, either for personal reasons of his own, is reluctant to give us the entire picture, or because of the many things which have happened in his business and perhaps to himself personally since this thing occurred, that he does not just remember as thoroughly as otherwise he might. I think we should permit Mr. Chotiner with reasonable care at least to ask leading questions here. After all is said and done, the Court is not going to decide this case simply and solely on the testimony of Mr. Zemansky. I am going to hear all the witnesses and all of the testimony and take into consideration that perhaps Mr. Zemansky gave some of his evidence after leading questions were asked. After I get the whole picture of the entire thing, then I will come to a conclusion. Let us proceed. \* \* \* \*

Q. By Mr. Chotiner: Now, Mr. Zemansky, so I won't have to ask any leading questions of you, have you given us all [154] of the conversation that you can now remember that took place between you and Mr. Kleinman regarding the subject matter of his taking a cut in salary?



(Testimony of Sol Zemansky.)

Mr. Wolver: I don't believe there was any testimony about his taking a cut in salary in this proceeding.

Q. By Mr. Chotiner: Did you have a conversation with Mr. Kleinman regarding a reduction of his salary?

A. If I recall it, I think he volunteered to cut his salary.

Q. What was he receiving at the time?

A. \$75 a week.

Q. To what was it cut?

A. To \$50, I believe.

Q. What did Mr. Kleinman tell you when he volunteered to take a cut in salary, if anything?

A. Well, he said that business was quiet and he figured everybody should work to reduce the expense.

Q. Did he say anything else regarding that subject matter?

A. I don't recall anything else.

Q. For the purpose of refreshing your memory, did he tell you that he was of the opinion that conditions, as they then existed in the business, could not last, in substance or effect?

Mr. Wolver: Objected to as leading and suggestive.

The Referee: Overruled. [155]

A. I don't recall that.

Q. By Mr. Chotiner: Did Mr. Kleinman say anything to you at that time regarding the subject

(Testimony of Sol Zemansky.)

of whether or not the business could pay him \$75 per week?      A. I don't recall that.

Q. For the purpose of refreshing your memory, isn't it true that Mr. Kleinman told you that the business did not justify paying him \$75 per week?

A. I don't recall that. [156]

Q. By Mr. Chotiner: For the purpose of refreshing your memory, isn't it true that Mr. Kleinman told you, "How do you expect us to make loans when there is no money in the cash drawer?"

A. There was a conversation in reference to that, but I don't recall how it came about.

Q. Did your conversation take place before or after the security was first given to Mr. Kleinman?

A. I believe it was before and after, both.

Q. Have you given us all the conversation that you had with Mr. Kleinman regarding the subject matter of your devoting your full time to the pawnbroker business?

Mr. Wolver: That is objected to as assuming facts not in evidence. There was no such conversation that I recall, here.

The Referee: I don't think we have had any evidence on that.

Q. By Mr. Chotiner: Did you have a conversation with Mr. Kleinman regarding the subject matter of your engaging in business other than the pawnbroker business?      A. I don't recall any.

Q. For the purpose of refreshing your memory, isn't [157] it true that Mr. Kleinman told you that

(Testimony of Sol Zemansky.)

if you received a break in the Tango business, you would be able to continue in the pawnbroking business?

Mr. Wolver: May I have that question?

(Question read.)

A. I don't recall.

Q. By Mr. Chotiner: For the purpose of refreshing your memory, isn't it true that Mr. Kleinman told you that if you were able to operate the Tango games, you could work things out, otherwise you could not?

A. I don't recall any such conversation.

Q. Did you ever have a conversation with me after your petition was filed in Chapter 11, in which I asked you for a statement of the events and facts concerning the Kleinman transaction?

Mr. Wolver: That is objected to as being incompetent, irrelevant, and immaterial, not proper direct examination, attempting to impeach the questioner's own witness.

Mr. Laugharn: If the Court please, on that particular question——

The Referee: I don't think this question will do any harm. It merely is, did you have a conversation with Mr. Chotiner after the Chapter 11 proceedings had started, in which he asked you for a statement on the Kleinman matter. A. I did.

Mr. Laugharn: On that point, if the Court would clear [158] us up on one matter, we could probably proceed more rapidly, and that is whether or not the

(Testimony of Sol Zemansky.)

Court is considering that this witness is our witness to the point of binding the Trustee. Now, as an elementary point, we think we can argue that he is not under the case of—what was that case?

Mr. Weller: The Anches, as I recall; that is my recollection.

Mr. Laugharn: Now if he is our witness and if this man is giving us a statement entirely different, entirely elaborated on those points and then takes the stand and does not follow that statement in any of these major particulars, then we are presumed to be somewhat surprised and can take another course of action in connection with it.

The Referee: What do you think the law is?

Mr. Laugharn: We think we are not bound by this witness. We think we should have the latitude that apparently the Court is now giving us in trying to bring out these matters, because we will bring them out in the general matter of impeachment anyway; I mean, as to having made this statement. We are going to ask Mr. Dienstag to testify, especially about these conversations. Here is a matter that changed the entire course of business of this bankrupt; it took weeks to consummate, a trip to Los Angeles and a trip to San Francisco, and yet this witness [159] dismisses it just with one sentence. That was all discussed at the time when he was insolvent and we have already perfected the record as to his financial condition at that time.



(Testimony of Sol Zemansky.)

The Referee: Let me ask you a question, for what purpose is this evidence being introduced; what issue does it affect?

Mr. Laugharn: We want to show first the position of Kleinman in this business, his closeness to it.

The Referee: Yes, I know, but what does it bring us to; does it bring us to the question of preference or what?

Mr. Laugharn: It goes to the question of the knowledge of insolvency and the demand for the security.

The Referee: Then it leads to your objection on the ground of preference, is that right?

Mr. Laugharn: It goes to that point.

(Discussion between Court and counsel.)

The Referee: Let us get down to the question Mr. Laugharn asks. I am satisfied, gentlemen, that the modern decisions are to the effect that it is the duty of the Court to legitimately bring out all the facts.

Mr. Wolver: That is right.

The Referee: And it is not a question of who is going to be bound by any particular evidence that is brought out, but I think that both sides should have the opportunity, [160] within reasonable limits, of asking such questions of witnesses who are brought on the stand, whether the side that asks the questions brought that witness or not, as will bring out all the legitimate facts of the case. Now, these bankruptcy cases are a bit difficult and they are a

(Testimony of Sol Zemansky.)

bit different from State Court cases. Mr. Zemansky here has no personal interest in the outcome of this matter at all, I mean, insofar as dollars and cents is concerned.

\* \* \* \*

Q. By Mr. Chotiner: Approximately how many conversations did you have with Mr. Kleinman regarding the subject matter of giving him security before you consented to it?

A. There might have been several.

Q. Did any of those conversations take place in the presence of Mr. Dienstag before you consented to give the security?

A. I think Mr. Dienstag may have been present one day or two; I don't recall.

Q. At the time when Mr. Dienstag was present at a conversation, will you tell us what the conversation was, if there was any, regarding the subject matter of giving security to Mr. Kleinman?

A. Well, Mr. Dienstag merely explained the situation as to how to handle it from a strictly legal point.

Q. What did he say?

A. About giving Mr. Kleinman the security and working [161] out these contracts and replacing the collateral with other collateral, after the collateral that was up had been redeemed.

Q. That took place before you consented to give the security, is that correct?

A. I believe so.

(Testimony of Sol Zemansky.)

Q. Now, was there anything said by any of the parties to the conversation at which Mr. Dienstag was present, as to what Mr. Kleinman's course of conduct would be if you did not give the security?

A. There was never anything mentioned.

Q. Was that subject ever discussed at any time?

A. No.

Q. By Mr. Chotiner: Now, directing your attention to the occasion when Mr. Dienstag was in Los Angeles a few days prior to your signing the contract of February 24, [162] 1939, have you given us the entire conversation as you now recall it, that took place on each occasion when Mr. Dienstag was present regarding the subject matter of giving security to Mr. Kleinman?

A. So far as I recall.

Q. Was anything said by Mr. Dienstag or anyone else in that conversation regarding your being available to sign a contract?

A. Yes, I believe the papers were to be signed on a certain afternoon or in the evening, and I had to leave for San Francisco. I got an unexpected call.

Q. Did you impart that information to Mr. Dienstag?

A. No.

Q. Did you tell anyone that you were going to San Francisco?

A. My brothers knew it.

Q. Did you tell Mr. Kleinman?

A. I don't recall whether I did or not.

Q. When you were in San Francisco, did you receive a telephone call from Los Angeles regarding this subject matter?



(Testimony of Sol Zemansky.)

Mr. Wolver: That is objected to as assuming facts not in evidence.

The Referee: Overruled.

A. I don't recall.

Mr. Dienstag: Pardon me. Was that question directed [163] to the period after Mr. Sol Zemansky reached San Francisco and before he signed the contract?

Mr. Chotiner: Yes, with regard to which he testified he did get a call. He has testified that he received one at the St. Francis Hotel from you notifying him that you were in town.

Mr. Dienstag: Is that what you are speaking of?

Mr. Chotiner: No, I am trying to find out whether he got a call from Los Angeles.

Mr. Dienstag: I am sorry.

Q. By Mr. Chotiner: Let's get at this question. At the time you were in San Francisco, around February 24th, you would know what occasion we are talking about now? A. Yes.

Q. Did you receive any telephone call from Los Angeles from anyone, in which the subject was discussed pertaining to the giving of security to Mr. Kleinman?

Mr. Wolver: That is objected to, your Honor, as being incompetent, irrelevant, and immaterial. If it is limited to Mr. Dienstag or Mr. Kleinman, we would have no objection, otherwise clearly the question is necessarily hearsay.

The Referee: Overruled.



(Testimony of Sol Zemansky.)

A. I don't recall any conversation.

Q. By Mr. Chotiner: Then, the only telephone call you received regarding this subject matter when you were in San Francisco was one from Mr. Dienstag to the effect [164] that Mr. Dienstag was in town and wanted you to come down to the office; is that right?

A. That is the way I recall it.

Q. When you went down to Mr. Dienstag's office, was any conversation held prior to your signing the contract?

A. Not that I recall. I believe he handed me the contract and I read it through and signed it. That was about all that took place there.

Q. Did you ever tell Mr. Dienstag prior to the signing of the February 24th contract, that you would be unable to give Mr. Kleinman any security?

A. I don't recall that.

Q. Well, did you consent to give security to Mr. Kleinman during the first conversation that you had with Mr. Dienstag in Los Angeles regarding that subject matter?

A. In other words, my first conversations, I believe, were with Mr. Kleinman, not Kleinman and Dienstag.

Q. I know that, but I mean your first conversation with Mr. Dienstag, did you consent during that conversation to give security to Mr. Kleinman?

A. I had already told Mr. Kleinman it would be all right. [165]

(Testimony of Sol Zemansky.)

Q. During the time you were holding these conversations with Mr. Kleinman, were you putting him off in any way?

Mr. Wolver: That is objected to, your Honor; in the first place, it is unintelligible, and in the second place it is incompetent, irrelevant, and immaterial, and calls for the conclusion of the witness.

The Referee: Overruled. Answer the question.

A. I will have to answer that, your Honor, with a little explanation.

The Referee: All right.

A. Naturally, I was only one of three partners in the business and I would have to take it up with my partners before I could say yes or no.

Q. Your two brothers, Abe and Dave Zemansky, were in Los Angeles from the end of 1938 to February 24, 1939, weren't they?

A. Yes, I believe they were.

Q. You saw your brothers practically every day during that period of time, isn't that true?

A. Yes.

Q. You lived in the same house with your brother Dave [166] Zemansky, isn't that true?

A. Yes.

Q. Did you take that subject matter up with your two brothers the first time when Mr. Kleinman first suggested it to you?

A. I couldn't say. I did take it up with them.

(Testimony of Sol Zemansky.)

Q. At any rate, it was talked over either the end of 1938 or the first part of 1939, before February 24th, 1939, before the contract was executed, is that right? A. That is correct.

Q. Now, for the purpose of refreshing your memory, isn't it true, Mr. Zemansky, that for a period of two weeks you kept putting off Mr. Kleinman so far as giving him security was concerned?

Mr. Wolver: That is objected to as calling for the conclusion of the witness, assuming facts not in evidence.

Mr. Dienstag: And immaterial. It is also immaterial.

The Referee: Overruled. Answer the question, please.

The Witness: May I have the question?

(Question read.)

A. It may have been that period. I talked to him, but I wouldn't say I was putting him off.

Q. By Mr. Chotiner: Then I will ask you if, on or about August 7, 1939, you had a conversation with me at my office, located at 508 James Oviatt Building, 617 South Olive Street, in which you told me that for a period of two [167] weeks you kept putting off Mr. Kleinman.

Mr. Wolver: That is objected to as incompetent, irrelevant, and immaterial, not proper impeachment, and hearsay. I might invite the Court's attention to the fact that we have evidence here of Mr. Kleinman leaving their employ because of going on

(Testimony of Sol Zemansky.)

a vacation. By his question, Mr. Chotiner assumes that Mr. Kleinman was always in town and available during this whole period.

The Referee: I know, but the question is simply, did you or did you not make such statements to Mr. Chotiner. That brings us squarely up to the point whether counsel for the Trustee should be permitted, in the light of the present state of the record, to impeach this witness.

(Discussion between Court and counsel.)

The Referee: The objection is overruled. Read the question.

(Question read.)

A. That is a question that can't be answered yes or no. I had many conversations with Mr. Chotiner, but I don't recall what they all were.

Q. By Mr. Chotiner: Then, I assume at this time you don't recall whether you ever told me that, is that it?

A. I don't recall those specific ones, no.

Q. In substance or effect, did you tell me that statement?

A. I don't recall anything like that. [168]

Q. Now, directing your attention to February 24, 1939, when the contract, Trustee's Exhibit No. 4, was executed, you have that occasion in mind, have you not?

A. Yes.

Q. Subsequent to February 24, 1939, other contracts were executed, is that correct, with Mr. Kleinman?

A. That is correct.



(Testimony of Sol Zemansky.)

Q. Now, do you recall at this time the circumstances under which the contract dated March 2, 1939, for \$25,920.50, which is Trustee's Exhibit No. 5 by reference, was executed?

A. I don't recall.

Q. Well, do you recall, after executing the February 24, 1939, contract, that there was another contract executed on March 2nd for approximately \$25,000?

A. There was a second contract, but I don't recall the amount.

Q. I will now show you Trustee's Exhibit No. 5 by reference, being the agreement dated March 2, 1939, amount, \$25,920.50, I will ask you to look at that contract, and after you have done so tell me whether you recall the circumstances under which that contract was executed?

A. I don't recall it, sir.

Q. You signed that contract, didn't you, that copy?

A. I assume I must have signed it.

Q. For the purpose of refreshing your memory—withdraw that. Can you tell us why that contract was executed? [169]

Mr. Miller: Objected to.

The Referee: Overruled.

A. I assume we must have owed Kleinman that amount of money.

Q. By Mr. Chotiner: Did that contract represent an equal amount of pledges that had been with-

(Testimony of Sol Zemansky.)

drawn from the pledges that had been given to Mr. Kleinman as security other than the February 24th contract?

A. I am not familiar with those contracts but it may have had something to do with the Simons situation.

Q. Between February 24, 1939, and March 2, 1939, did Mr. Kleinman advance you new cash in the sum of approximately \$25,000?

A. I don't believe so.

Q. As a matter of fact, you know that he did not, isn't that true?

Mr. Wolver: That is objected to as argumentative.

The Referee: Anyway, it is overruled.

Mr. Chotiner: May we have an answer to the question?

The Witness: What was the question?

Q. By Mr. Chotiner: May we have an answer to the question?

A. He didn't advance any money at that time.

Q. Now, it was between February 24, 1939, and March 2, 1939, that security was given to the Simons Lunch Room and the Gans creditors, isn't that true? [170]

Mr. Dienstag: What were those dates?

Mr. Chotiner: Between the date of February 24th and March 2, 1939.

A. To Simons, but not to Gans.

(Testimony of Sol Zemansky.)

Q. By Mr. Chotiner: Does that refresh your memory as to the circumstances under which the March 2, 1939, contract was executed?

A. I am not certain. I think some loans were taken from Mr. Kleinman's box and put in the Simons deal.

Q. And that was done with Mr. Kleinman's consent, isn't that true? A. Yes.

Q. As a matter of fact, Mr. Kleinman offered to do so, isn't that true? A. Yes. [171]

Q. By Mr. Chotiner: Now, on March 22, 1939, a contract was executed in the sum of \$2,510, which is Trustee's Exhibit No. 6. I will ask you to look at that exhibit, and after looking at it tell me if you recall the circumstances under which that contract was executed.

A. Those things, after they were replaced, were always handled by my brother and I merely signed the papers.

Q. Which brother handled it?

A. Abe, generally.

Q. Did Dave Zemansky ever handle any of them? A. I don't think so. [172]

Q. What were the circumstances, if you know them or can recall them, under which these contracts were executed so far as the setting aside of security for Mr. Klienman was concerned?

A. Well, I believe the mechanics of it was he was given new loans and a new deal was made, a new note executed for that amount of money.

(Testimony of Sol Zemansky.)

Q. When this new note was executed, did Mr. Kleinman give you the amount of money represented by that new note?

A. I never handled the transaction, but my brother handled it.

Q. Which brother handled it? A. Abe.

Q. When the new notes were executed, new loans were set aside as security for Mr. Kleinman, is that correct?

A. I understand that was the way it was always done.

Q. Were those new loans set aside for Mr. Kleinman at the time when the old loan was withdrawn by virtue of redemption by customers?

A. I believe so.

Q. At the same time?

A. Yes sir; will you ask that question again?

Mr. Chotiner: Read the question.

(Question read.)

Q. By Mr. Chotiner: Do you understand the question?

A. Yes, but the answer to it would be no. They were [173] not set aside at the same time, because those were the accumulation.

Q. In other words, whenever these new contracts were executed, they were the result of an accumulation of loans that had been withdrawn from the Kleinman security on account of redemption?

A. That is correct.



(Testimony of Sol Zemansky.)

Q. How would you arrive at what periods you would execute these new contracts?

A. I don't believe there was an definite period ever worked out.

Q. Who broached the subject whenever these contracts would be executed?

A. Mr. Kleinman. [174]

Q. Mr. Zemansky, directing your attention now to the time when you had a conversation with Mr. Kleinman, at which Mr. Dienstag was present, was there any conversation regarding the subject matter of how the new contracts were to be handled?

A. As I recall, Mr. Dienstag, I believe, said at that time that as new contracts were to be made, it would sort of work out on a revolving theory; in other words, new loans followed old loans, making a new contract each time it built up. That was about the substance of it.

Q. Do you recall any further conversation with Mr. Dienstag at which that subject matter was discussed?

A. No, I don't recall anything else.

Q. Was anything said regarding the subject matter of the execution of new notes?

A. Yes, they asked to have new ones.

Q. Who said that?

A. I believe Mr. Dienstag, in explaining the mechanics [175] of the thing how it should be worked out.

Q. Tell the Court as best you can recall at this time, recognizing that you cannot be expected to

(Testimony of Sol Zemansky.)

remember each word that each person said, but tell us as you can best recall it, what Mr. Dienstag said as to how the mechanics of having these new notes would be handled.

A. Well, as loans were redeemed, the ones Mr. Kleinman was holding would be totaled up and a sum equivalent to that would be replaced and a new note given.

Q. Was anything said about any checks being given in connection with these new notes?

A. Yes, I believe he said if we paid for the old loans, that were redeemed, new money would be given in lieu of the new transaction.

Q. Did you receive new money in the same amount as the new contracts from Mr. Kleinman?

A. The amount varied, I believe.

Q. Well, directing your attention to Trustee's Exhibit No. 5, being the contract of March 2, 1939, in the sum of \$25,920, at the time that contract was executed, did you receive from Mr. Kleinman the sum of appriximately \$25,000 in cash?

A. No, I don't believe so.

Q. At the time the contract of March 22, 1939, in the sum of \$2,510 was executed, did you receive that sum of money from Mr. Kleinman? [176]

A. Those were the contracts I am not thoroughly familiar with. They were handled by my brother Abe.

Q. Now, directing your attention to the time when the security was given to the Simons people,

(Testimony of Sol Zemansky.)

I believe you testified that Mr. Kleinman volunteered to let you use some of the pledges that had been given to him for security, is that correct?

A. Yes, that is correct.

Q. Now, when Mr. Kleinman volunteered to do that, what did he say to you?

A. Well, we were trying to get the pledges together for Simons and he said he would do this and replace them with others.

Q. Did he tell you why he would let you use them?

A. No, there wasn't any particular reason why.

Q. Was that subject discussed in any manner at all as to why you could use some of his pledges, which had been given to him a few days prior to that time?

A. No, there was no discussion of it.

Q. During the time you were consummating the giving of security to Simons that night at the Provident Loan Association, did you leave the room at any time and go out and talk to Mr. Kleinman regarding that subject?

A. Yes, I believe I did.

Q. What did you say to Mr. Kleinman on this occasion?

A. Well, when I explained to him that we wanted to get [177] this loan matter settled, he said that would be all right.

Q. Was anything else said?

A. I don't recall anything else.

(Testimony of Sol Zemansky.)

Q. Was the Sheriff in the Provident Loan office during the time you were consummating this transaction with the Simons people? A. Yes.

Q. And was Mr. Kleinman there at the same time? A. Yes.

Q. Do you know whether Mr. Kleinman saw the Sheriff there that night?

Mr. Wolver: That is objected to.

The Referee: Overruled.

Q. By Mr. Chotiner: How close were they?

The Referee: If you know.

A. I believe the Sheriff was out in the hallway and as Mr. Kleinman came in the premises, he would probably have to see him.

Q. I will now show you Trustee's Exhibit A for Identification, consisting of three white slips of paper, and ask you what they represent.

A. There is one here for \$200, which has on it "558." I don't know whether Mr. Kleinman drew the \$200 at the Main Street store or at the Provident. [178]

Q. Are you familiar with the signature of Sam Kleinman?

A. I don't believe that is his signature. It looks like my brother Dave's.

Q. Directing your attention to the second slip there for \$50, with the name "S. Kleinman" on there, dated July 5, 1939.

A. That is Mr. Kleinman's signature.



(Testimony of Sol Zemansky.)

Q. What does that represent, that piece of paper?

A. That \$50 was drawn at the Provident by Mr. Kleinman.

Q. Directing your attention to the third slip, dated July 6, 1939, \$50, with the name "S. Kleinman," what does that represent?

A. \$50 drawn by him at the Provident.

Q. Is that the signature of S. Kleinman?

A. Yes.

Q. Are you familiar with the signature of S. Kleinman?      A. Yes.

Q. Have you seen it on numerous occasions?

A. Yes.

Q. Have you ever seen him write his name?

A. That is his signature.

Q. Can you tell me whether or not—by the way, what do you call these slips of paper in the operation of your business?      A. Oh, tabs.

Q. Is that what they were known as by Mr. Kleinman? [179]      A. Yes.

Q. By Mr. Wolver: That is objected to as calling for the conclusion of the witness.

The Referee: It may go out.

Q. By Mr. Chotiner: Do you know what Mr. Kleinman called the slips of paper?

Mr. Wolver: The same objection.

Mr. Chotiner: I asked him if he knows.

The Referee: Overruled.

A. I suppose he called them tabs also.

(Testimony of Sol Zemansky.)

Q. By Mr. Chotiner: Now, can you tell us whether or not the sums of money represented by these tabs, or the second and third tab, were ever repaid to the Provident Loan Association?

Mr. Wolver: That is objected to as assuming facts not in evidence, that there was any obligation.

The Referee: I don't understand you.

Mr. Wolver: That assumes they represented an obligation.

The Referee: What else would they represent? The witness has testified that those instruments represent a withdrawal by Mr. Kleinman.

Mr. Wolver: I will withdraw my objection.

The Referee: The question is were these two loans, not the first one, ever repaid?

A. I don't know. [180]

Q. By Mr. Chotiner: Well, did Mr. Kleinman ever draw money from the Provident Loan Association other than those two occasions there just identified by you, and give tabs as evidence of it, on other occasions?

Mr. Wolver: That is objected to.

The Referee: Overruled.

A. I believe he had drawn money at other times.

Q. By Mr. Chotiner: When he would draw money on other occasions, would he sign one of these tabs? A. Yes.

Q. When the money was repaid, what would be done with the tab?

(Testimony of Sol Zemansky.)

Q. What does that represent, that piece of paper?

A. That \$50 was drawn at the Provident by Mr. Kleinman.

Q. Directing your attention to the third slip, dated July 6, 1939, \$50, with the name "S. Kleinman," what does that represent?

A. \$50 drawn by him at the Provident.

Q. Is that the signature of S. Kleinman?

A. Yes.

Q. Are you familiar with the signature of S. Kleinman?      A. Yes.

Q. Have you seen it on numerous occasions?

A. Yes.

Q. Have you ever seen him write his name?

A. That is his signature.

Q. Can you tell me whether or not—by the way, what do you call these slips of paper in the operation of your business?      A. Oh, tabs.

Q. Is that what they were known as by Mr. Kleinman? [179]      A. Yes.

Q. By Mr. Wolver: That is objected to as calling for the conclusion of the witness.

The Referee: It may go out.

Q. By Mr. Chotiner: Do you know what Mr. Kleinman called the slips of paper?

Mr. Wolver: The same objection.

Mr. Chotiner: I asked him if he knows.

The Referee: Overruled.

A. I suppose he called them tabs also.



(Testimony of Sol Zemansky.)

Q. By Mr. Chotiner: Now, can you tell us whether or not the sums of money represented by these tabs, or the second and third tab, were ever repaid to the Provident Loan Association?

Mr. Wolver: That is objected to as assuming facts not in evidence, that there was any obligation.

The Referee: I don't understand you.

Mr. Wolver: That assumes they represented an obligation.

The Referee: What else would they represent? The witness has testified that those instruments represent a withdrawal by Mr. Kleinman.

Mr. Wolver: I will withdraw my objection.

The Referee: The question is were these two loans, not the first one, ever repaid?

A. I don't know. [180]

Q. By Mr. Chotiner: Well, did Mr. Kleinman ever draw money from the Provident Loan Association other than those two occasions there just identified by you, and give tabs as evidence of it, on other occasions?

Mr. Wolver: That is objected to.

The Referee: Overruled.

A. I believe he had drawn money at other times.

Q. By Mr. Chotiner: When he would draw money on other occasions, would he sign one of these tabs? A. Yes.

Q. When the money was repaid, what would be done with the tab?



(Testimony of Sol Zemansky.)

A. Given to him or destroyed by ourselves.

Q. I will now show you a photograph and ask you what that picture represents?

A. That is the front vault door of the Provident.

Q. And is that the vault that was used by the Provident Loan Association during the time of your transactions with Mr. Kleinman?

A. Yes. [181]

Q. And who had the combination to the safe?

A. Mr. Kravitz had the combination.

Q. And all three Zemansky Brothers?

A. All three Zemansky Brothers.

Q. Did Mr. Kleinman have the combination?

A. I don't think he had the combination of the vault.

Q. Now, directing your attention to Exhibit 10-B, being [183] a picture of the vault with the door open, after the combination was used did the vault door open?

A. Then the vault door would open.

Q. Then what would be necessary to get inside the vault after the door was open?

A. You would first have to open this gate again.

Q. The gate on the right-hand side?

A. Yes. Then this one operated with a key.

Q. Which one are you referring to?

A. That is what we called the day gate, the technical term day gate, of the vault, and that operated with a key.

(Testimony of Sol Zemansky.)

Q. Who had access to that key?

A. All the loan clerks.

Q. And all of the Zemansky Brothers?

A. That is right.

Q. Did Mr. Kleinman have access to that key also?

A. Yes.

Q. When that key would open the door, then the person would be right inside of the vault? Is that correct?

A. That is right.

Q. Now, directing your attention to Trustee's Exhibit 10-C, you said that represents the interior of the vault. Will you explain to the Court what the little rectangular squares represent in that picture?

A. They were cardboard, on which we used to number the pledges the way they ran. [184]

Q. Inside of these boxes were what?

A. The loan pledges.

Q. When you use the term "loan," that is synonymous with pledges of the customers?

A. That is correct; pledges and loans are the same.

Q. When the pledges were set aside as security for Mr. Kleinman, were the boxes marked in any manner?

A. I believe there was a "K" in front of the boxes on the cardboard.

Q. Then I take it you would have one complete drawer of pledges that would be used for the Kleinman security; did you change the position of that box?

A. Well, the boxes increased as we went along;

(Testimony of Sol Zemansky.)

in other words, we merely started with one box and there was an increase of two or three.

Q. Let us assume that one of the boxes was the first box in the second row, that had been set aside for Mr. Kleinman as security; was the position of that box changed in any way?

A. I don't know, Mr. Chotiner.

Q. I will now show you an enlarged photograph and ask you what that represents.

A. That is a section of the interior of the vault.

Q. And it shows the drawers where the pledges were kept, is that right?           A. Yes. [185]

Q. And that is in the same condition as they were during the time of each transaction with Mr. Kleinman?           A. Yes.

Mr. Chotiner: We ask that this be marked as Trustee's Exhibit No. 10-D in evidence.

The Referee: Received as Trustee's Exhibit 10-D.

Q. At the time the security was given——

Mr. Dienstag: Just a moment, please, Mr. Chotiner; may I see that exhibit if you are through with it?

Q. By Mr. Chotiner: At the time the security was first given to Mr. Kleinman, were the boxes which contained these pledges marked at that time with any insignia?           A. I don't know.

Q. Do you know of your own knowledge whether they were marked at any time after that?

A. The Kleinman pledges, I believe, always had a "K" on them.

(Testimony of Sol Zemansky.)

Q. Do you know when that "K" was put on there in relation to the time they were set aside for Mr. Kleinman?

A. I think at the time we set them aside.

Q. Were you present on any of those occasions?

A. No, that transaction was handled by Mr. Kravitz.

Q. At the time when security would be given to Mr. Kleinman, were the pledges transferred from one box to another box?

A. Yes. [186]

Q. What would be done with the box from which the pledges had been transferred?

A. The other loans would remain in that box.

Mr. Chotiner: You may cross-examine.

### Cross-Examination

By Mr. Wolver:

Q. Mr. Zemansky, I believe you told us you knew Mr. Kleinman for a great number of years?

A. About 25 years or more.

Q. Prior to 1933, did you have any monetary transactions with Mr. Kleinman by way of loans or otherwise?

A. Yes.

Q. Do you recall approximately when you had your first transaction with him?

A. I think it was sometime in 1926 or 1927, '26 or '27.

Q. Do you recall about how much money was involved during that year?

A. I never knew the amount until Mr. Chotiner mentioned it the other day at the examination.



(Testimony of Sol Zemansky.)

Q. Does that refresh your memory?

A. Yes.

Q. How much was it? A. \$30,000.

Q. Was that repaid to Mr. Kleinman?

A. It was repaid, yes. [187]

Q. The following year did you have any monetary transactions with Mr. Kleinman?

A. You mean after 1926 or 1927. He was paid back around '29 or '30; then I don't think we had any more transactions with him until 1933.

Q. Would it be fair to say, Mr. Zemansky, that between 1927 and 1929 you had considerable monetary transactions with Mr. Kleinman, all of which were repaid to him prior to 1929?

A. Yes.

Q. Then in 1933 you had another monetary transaction with Mr. Kleinman? A. Yes.

Q. And you had several monetary transactions until 1935, is that correct?

A. That is correct.

Q. Do you know whether or not Mr. Kleinman was in business during 1933?

A. I am not certain as to that.

Q. However, in 1935 Mr. Kleinman entered your employ? A. Yes.

Q. Now, at the time he entered your employ, you had considerable merchandise, consisting of unredeemed pledges, on hand? A. Yes.

Q. And you had a conversation with him, is it not true, [188] Mr. Zemansky, prior to that time, in which you asked him to come in and assist

(Testimony of Sol Zemansky.)

you in disposing of this unredeemed merchandise or part of it?       A. Yes.

Q. And primarily, the reason that he entered your employ at that time was to dispose of your merchandise?

A. That was the primary reason.

Q. At that time you knew Mr. Kleinman was well known in the precious gem industry in this community?       A. Yes.

Q. You knew at that time that he had a great number of contacts with jobbers and wholesalers?

A. Yes.

Q. Was that not the reason that actuated you in employing Mr. Kleinman?

A. That, plus the fact that I have a lot of respect for his ability as a diamond expert.

Q. You also knew he was a very fine gem expert?       A. Yes.

Q. Now, when he entered your employ, do you remember approximately the date?

A. I don't.

Q. Would it be fair to say it was in the latter part of 1935?

A. I wouldn't want to fix the date, but the record will show from his first check, his first salary check. [189]

Q. Is it not a fact that it was approximately the time when you opened up the new Provident?

A. I believe it was right around that time.

Q. Now, when he first entered your employ, you gave him merchandise to sell?       A. Yes.

(Testimony of Sol Zemansky.)

Q. Do you recall the amount of the merchandise—I don't mean in value, but in the number of articles? A. No, I don't.

Q. Was it a considerable number?

A. A very large amount, and in dollars and cents also.

Q. And he sold that for you? A. Yes.

Q. And that took up practically all of his time for the first, for the earlier period of time he was with you? A. Yes.

Q. Do you recall about how long it was that practically all of his time was taken up with this type of work?

A. I couldn't fix the period.

Q. During that time you found out that Mr. Kleinman was very expert in his appraisals of precious stones and gems?

A. I had a lot of confidence in his ability.

Q. Do you recall approximately how much he sold for you shortly after he came to work for you, in money?

A. I don't know, but the record will show from the [190] first percentage that he received. It was one per cent of the total. That will tell you the total amount that he sold.

Q. That was a considerable amount?

A. That was a considerable amount.

Q. Do you recall if it approximated or exceeded a million dollars?

A. I should judge it was less than that.

(Testimony of Sol Zemansky.)

Q. Would it be fair to say that it was in the neighborhood of a million dollars?

A. No, I don't think it was a million dollars.

Q. Was it seven hundred thousand?

A. It probably was in that neighborhood.

Q. You don't recall the exact figure?

A. The figure can be obtained correctly.

Q. At this time, you don't recall exactly?

A. No, I don't recall.

Q. During any of that period, Mr. Zemansky, you were not giving to Mr. Kleinman as much merchandise to sell as you formerly had?

A. That is correct.

Q. You provided him with a separate office?

A. Yes.

Q. And throughout the transactions he has maintained that office in your premises?

A. Yes. [191]

Q. Where was that office situated?

A. That was in the northeast corner of the room.

Q. Did he have a desk in that office?

A. Yes.

Q. And that desk contained his personal property and no other person went there?

A. I believe it was his personal property.

Q. You never went to his desk?

A. No, I never opened his desk.

Q. And no other person did in your presence?

A. Not that I know of.

Q. Do you know if it was locked from day to day?

A. Yes, he had it locked. [192]



(Testimony of Sol Zemansky.)

\* \* \* \*

Q. Wasn't that also true of Mr. Kleinman, when they got real busy he would step behind there and give them help?

A. Well, in the latter part of his time there, he spent a considerable time in the loan department, but at the inception, when he went to work for us, he spent very little time.

Q. When you say "latter part," Mr. Zemansky, approximately what period do you refer to?

A. Oh, I was referring to the last six or seven months prior to July of 1939.

Q. At that time were you giving him very much merchandise to sell?

A. Not very much.

Q. He didn't stop by the loan department when he had merchandise to sell?

A. When he had merchandise to sell, he devoted most of his time to the merchandise.

Q. Now, when merchandise was given to him to sell, it was necessary for him to assort and appraise the merchandise? A. Yes.

Q. And he did that? [193] A. Yes.

Q. Then it was necessary for him to contact other merchants? A. That is right.

Q. State, if you know, whether or not he ever went into or obtained other parts of your merchandise to find a desired stone for purchasers?

A. That isn't quite clear to me.

Q. Did he ever go into any merchandise that was not given to him, did he ever examine that

(Testimony of Sol Zemansky.)

to see if he could find therein a stone for some purchaser, who wanted a particular type of a stone?      A. Yes, sometimes.

Q. And that took some of his time?

A. Yes.

Q. All of those things you have told us took a considerable part of his time?

A. Considerably.

Q. Now, Mr. Zemansky, did you ever see the loan clerks consult Mr. Kleinman relative to the appraising of stones?

A. Yes, many times.

Q. That was generally, Mr. Zemansky, when a loan clerk was in doubt as to the value of a stone in proportion to the amount of loan which a customer desired?      A. That is right. [194]

Q. Now, Mr. Zemansky, after Mr. Kleinman had been working for some little time, do you recall whether there [195] was any change in the condition of his health?

A. Yes, he was having some trouble with his leg and I think with his breathing, his lungs.

Q. His health was failing?

A. He didn't look any too healthy.

Q. And do you recall that sometime in May, 1938, he told you that he desired a vacation or he wanted to be relieved of part of his duties?

A. Yes.

Q. He told you he didn't desire to come into the place of business quite as early as he formerly had?      A. That is right.

(Testimony of Sol Zemansky.)

Q. At that time didn't he state that the amount of sales or the amount of merchandise that had been given to him to sell had so diminished it didn't require quite as much of his time?

A. That is right.

Q. And he said that he desired that his salary be reduced from \$75 to \$50, and that he would not come down as early as he had or devote quite as much time?

Mr. Laugharn: I object to that compound question.

The Referee: Simplify it, please.

Q. By Mr. Wolver: He said that at that time he desired his salary to be reduced from \$75 to \$50? A. Yes. [196]

Q. He did leave your employ at the end of 1938?

A. No, I don't think so. I think he was there in 1939. [197]

Q. By Mr. Wolver: Do you recall that Mr. Kleinman did leave at any time?

A. No, unless he left town for a short period, but I believe he was still in our employ up to the July situation. [198]

Q. Do you recall about a week after you gave Mr. Dienstag the pledge ticket, having another conversation with Mr. Dienstag?

A. I don't recall.

Q. Do you recall Mr. Dienstag having a draft of a proposed contract with him? [200]

(Testimony of Sol Zemansky.)

A. I recall him having a draft but I don't know whether that was the original time that he presented me with the draft or whether there was another meeting.

Q. You don't recall if it was at the conversation at which time you gave him the pledge, or another time?      A. No, I don't recall.

Q. But you do recall him having the draft?

A. I recall giving him the ticket and I recall him having either the draft or the original contract, one or the other.

Q. Do you recall discussing the terms of this contract with him?

A. No, I believe it was explained to me at the time I talked to him with Mr. Kleinman, Mr. Dienstag and myself.

Q. Do you recall if a conversation and discussion was had concerning all of the obligations between Kleinman and Zemansky Brothers?

A. Yes.

Q. Do you recall at that time a discussion had concerning a note signed by yourself and Max Golob?      A. Yes sir.

Q. Didn't Mr. Dienstag at that time say that he wanted this contract that he was going to draw to include all the transactions between the parties?

A. That is correct.

Q. Do you recall for what purpose you gave Mr. Dienstag [201] the specimen of the pledge ticket?

A. I believe he wanted to base his contract on that ticket.



(Testimony of Sol Zemansky.)

Q. There was a provision on the back of the ticket of the law?

A. Several provisions that he wanted to see.

Q. At this conversation we were discussing, Mr. Zemansky, you discussed with Mr. Dienstag the origin of all the obligations? A. Yes.

Q. A considerable time was used in that discussion in explaining the origin of all the obligations?

A. I don't know how much time. Mr. Dienstag knew the obligations and I knew them and Mr. Kleinman had the notes.

Q. Those were evidenced and viewed at that time? A. Yes, that is correct.

Q. Do you recall any other part of that conversation? A. No.

Q. Do you recall whether or not Mr. Dienstag said he would put his contract into finished form?

A. Yes.

Q. Did Mr. Dienstag say he would cause the contract to be put in finished form? A. Yes.

Q. At that time, do you recall requesting Mr. Kravitz and Mr. Sego to start the selection of pledges? [202]

A. I think it was Mr. Kravitz.

Q. Do you recall doing that on that occasion?

A. That was after Mr. Dienstag said he would draw the contract.

Q. After he said he would bring it in finished form, that same meeting you had Mr. Kravitz start the segregation of the pledges?

(Testimony of Sol Zemansky.)

A. That is right.

Q. Do you recall about how long that was prior to the time that the contract was signed?

A. I don't know the period.

Q. Shortly after that, Mr. Zemansky, you left for San Francisco?      A. Yes.

Q. Did you have any conversation with Mr. Dienstag or Mr. Kleinman prior to your leaving?

A. I believe they were to bring the contract either that night or the following day, and then I had to go to San Francisco on a hurry up trip, and I stayed at the St. Francis Hotel, and the following morning there was a call from Mr. Dienstag.

Q. And pursuant to that call you went to the office of Mr. Dienstag?

A. He asked me to come down to his office. I went down and signed the contract at his office.

Q. At the same time you also signed the notes? [203]      A. Yes.

Q. At that time the pledge numbers were included in the contract?

A. I am not certain as to that.

Q. Did you return to Los Angeles shortly after your conversation?      A. Yes.

Q. And it was shortly after you returned to Los Angeles that the Simons transaction came into existence?      A. A very short time.

Q. You called Mr. Kleinman at San Francisco?

A. Yes.

(Testimony of Sol Zemansky.)

Q. You called him at Mr. Dienstag's home?

A. Either at his home or the office, I believe.

Q. You reached him through Mr. Dienstag?

A. Yes.

Q. The following day Mr. Kleinman and Mr. Dienstag came down to Los Angeles?

A. I believe it was the next day. [204]

Q. At that time, Mr. Zemansky, you told them that you were trying to work out a transaction, whereby Simons also could be secured, with Simons' attorney, Judge Pacht?

A. Yes.

Q. You asked Mr. Dienstag and Mr. Kleinman to accompany you, Mr. Dienstag so he could explain the law properly?

A. Yes.

Q. And they did accompany you to him?

Mr. Laugharn: To that last question, I didn't have the opportunity to object, but I would like to object to the question. The question is not clear and intelligible; explain the law, to whom; explain the law to Judge Pacht or to Mr. Kleinman or to this bankrupt?

The Referee: Will you ask another question?

Mr. Laugharn: I think that is important.

Q. By Mr. Wolver: You desired Mr. Dienstag to discuss the law with Judge Pacht, is that right?

A. Yes, I think the question before that stated about the Simons matter.

Q. And Mr. Dienstag and Mr. Kleinman accompanied you to Judge Pacht?

A. To Judge Pacht's office, yes.

(Testimony of Sol Zemansky.)

Q. That was the evening of the day they arrived in the city?

A. I think that was the day, I think so. [205]

Q. Is that your best recollection?

A. Yes.

Q. Do you recall who was at Judge Pacht's office at that time?

A. Judge Pacht, Mr. Kleinman, Mr. Dienstag and myself, and I think there was another attorney there in Judge Pacht's office; I am not certain as to that.

Q. And you heard Mr. Dienstag and Judge Pacht have the discussion? A. Yes.

Q. You don't recall exactly what was said?

A. No.

Q. More or less the law?

A. It was over my head; it was too much law.

Q. At that time Judge Pacht and his client agreed they would take security?

A. I believe it was determined on the basis of 50 per cent of the amount they had sued for to be secured. [206]

Q. Do you recall at that time a discussion concerning money that had been collected?

A. Collected, no.

Q. Do you recall asking Mr. Kleinman if you could use the money that had been collected on the contract of the 24th? A. I don't recall. [208]

Q. Do you recall a conversation at which Mr. Dienstag set forth the basis under which Mr. Klein-



(Testimony of Sol Zemansky.)

man's money could be used, or any fresh money that he brought forth could be used?

A. I can't recall it.

Q. Was anything said about a revolving security that night?

A. Something was mentioned on that line, about new contracts.

Q. Was there anything said about new contracts made, or the amount of money advanced or the amount of money used? [209]

A. Yes.

Mr. Chotiner: I move that the answer be stricken and object to the question as assuming facts not in evidence. It is compound, money advanced or used.

The Referee: What do you mean by that, Mr. Wolver, advanced or used?

Mr. Wolver: I am using the witness' own words. He said certain money would come in on redemptions, and we have discussed that further money would be advanced.

The Referee: Motion denied.

Q. By Mr. Wolver: Do you recall Mr. Dienstag stating that evening that all security that would be redeemed would have to be replaced by other security?

A. I don't recall that.

Q. Do you recall stating that all redemption money would have to be used for the acquiring of new pawns?

A. Yes, that the redemption money could be used for new pawns.

(Testimony of Sol Zemansky.)

Q. Mr. Kleinman at various times loaned to Zemansky Brothers various sums of money in I.O.U.'s?

A. He used to take an I.O.U. That's the way it was handled.

Q. Were all the I.O.U.'s finally evidenced by notes or were some repaid?

A. Some, I believe, were repaid and some notes issued, both. [210]

Q. As a matter of fact, Mr. Zemansky, didn't he at various times loan out sums of money on I.O.U.'s which were subsequently repaid?

A. I don't know as to the sums. There was money loaned on I.O.U.'s and he handed us back the I.O.U.'s and we gave him the money.

Q. That was done quite often? A. Yes.

Q. Do you recall on one occasion when the amount involved was \$15,000?

A. I don't recall it.

Q. Do you recall the incident when a diamond bracelet was presented to your company for a loan and Mr. Kleinman advanced \$15,000 to be loaned on that bracelet?

A. I recall the \$15,000 transaction, but I don't recall whether we obtained the money from Mr. Kleinman or not.

Q. What commodity was your firm dealing in?

A. Primarily diamonds and jewelry.

Q. You were only dealing in money to loan to others, isn't that so? A. Yes.

(Testimony of Sol Zemansky.)

Q. When your business was good and you had a great number of loans, that is the time that you were short on cash? A. That is correct.

Q. If business was bad, you would have a lot of cash [211] on hand?

A. Well, that would be the way it would operate.

Q. So at the various times that you told Mr. Chotiner that you were short on cash was when your business was good?

A. You better give me that question again.

Mr. Laugharn: I submit that that is unintelligible, that play on words is quite confusing as to what business was good.

The Referee: Overruled. It may stand.

Mr. Chotiner: I don't believe there was an answer given to the question.

The Referee: Read the question.

(Question read.)

A. Well, I could not answer that question in view of the present circumstances.

Mr. Wolver: I will withdraw the question.

Q. In the light of what you knew at that time, at the time you asked for the loans from Mr. Kleinman, did the lack of money, the available cash in the cash drawer, indicate that the loan business was good? A. Yes. [212]

Mr. Dienstag: May it be stipulated between counsel at this time—I don't remember if this was put in the form of a stipulation—that the copies of

(Testimony of Sol Zemansky.)

the contracts and notes now on file are duplicates of the originals which are now existing?

Mr. Chotiner: With the exception of the items which have not been conceded.

Mr. Dienstag: There is only one, the \$3700 note.

The Referee: The Court understands that to be the record.

Mr. Laugharn: Counsel stated that he prepared copies of the originals. I think we can safely agree that they are in evidence. [213]

The Referee: Very well. [214]

Q. By Mr. Wolver: Mr. Zemansky, do you recall the setting aside of the pledges for the contract of February 24th?

A. Well, the way I believe it was handled, I called Mr. Kravitz in and told him to set the loans aside.

Q. Were you present when that was done?

A. I don't believe I was.

Q. Were you present when the contract of March 2nd was segregated, the pledges that secured that?

A. I don't believe so.

Q. Do you recall ever observing the manner in which the pawns were segregated?

A. I have an idea how they were handled.

Q. How was it handled?

Mr. Chotiner: Objected to on the ground that it calls for the conclusion of the witness. He wasn't there.



(Testimony of Sol Zemansky.)

Q. By Mr. Wolver: If you know.

Q. By the Referee: What do you mean, you have an idea? Do you mean you were in the place at the time when they were doing it? [219]

A. No, but I knew the theory of it.

Q. How do you know, did someone tell you?

A. I could see the loans had been transferred from one drawer to another.

Q. After it had been done, you saw what was there? A. Yes.

The Referee: Overruled. Proceed. The answer was, after it was done he saw what was there.

Q. By Mr. Wolver: What did you see?

A. The loans were transferred from one drawer into another drawer and they were marked with a "K" on the face of the drawer.

Q. Did you observe the notations that were made to be copied into the contracts?

A. No.

Q. I believe you told Mr. Chotiner that the Citizens Bank and the Wulfsons had received security prior to this time? A. Yes.

Q. The Zemansky Brothers had other property in addition to the Provident Loan and the State Loan?

A. Yes, they had some other interests.

Q. And what were those other interests at that time?

(Testimony of Sol Zemansky.)

Mr. Chotiner: Objected to on the ground that it is immaterial and not proper cross-examination.

The Referee: Overruled. [220]

A. I don't know what they all were. They are in the original schedule of holdings.

Q. Where were the books of the Zemansky Brothers kept?

A. We had a set of books at the Provident pertaining to anything that happened at the Provident, and then there was also a set of books at the State Loan, at 558 Main Street.

Q. Where were the books kept that showed these other interests other than the Provident and the 558? A. At the 558 store.

Q. You had some property in Glendale; what books was that shown in?

A. That was shown in the 558 records.

Q. What books did you have at the Provident?

A. The pledge books pertaining to the pledge business, and the cash book or day book, a book similar to this.

Q. Did you have any other books at the Provident? A. No.

Q. What books did you have at 558?

A. We had books pertaining to the business at the 558 store.

Q. Were these books accessible to Mr. Kleinman, referring to the 558 store books?

A. No, not the 558. [221]

(Testimony of Sol Zemansky.)

Q. Did you have an interest in the 333 Club at El Cerritos, California? A. Yes.

Q. And how long did you have that interest?

Mr. Chotiner: We are going to object to this line of questioning on the ground that it is immaterial and not proper cross-examination. I don't see the materiality of it.

The Referee: Overruled.

Q. By Mr. Wolver: How long did you have that interest?

A. About three or four years.

Q. Do you have an interest in the Playhouse Fascination at Butte, Montana?

A. Part of an interest my brother Joe had.

Q. You had a portion of the interest?

Mr. Laugharn: May it please the Court, I believe that question should be more definite, whether or not he means the partnership had that interest or this witness as an individual.

The Witness: The partnership.

Mr. Wolver: The partnership.

The Referee: All right. [222]

Q. By Mr. Wolver: How long had you had that interest?

A. I don't know the exact length of time.

Q. You had an interest, the partnership had an interest, in the Club Fortune? A. Yes.

Q. And that is located at Reno, Nevada?

A. Yes sir.

(Testimony of Sol Zemansky.)

Q. How long have you had that interest?

A. Three years.

Q. The partnership had an interest in the Redondo Properties Corporation? A. Yes.

Q. And that corporation had considerable real estate? A. Yes.

Q. How long had you had that interest?

A. About three years.

Q. The partnership had an interest in the Palace Amusement enterprise? A. Yes.

Q. How long did you have that interest?

A. About four or five years.

Q. The partnership had an interest in the Redondo Palace? A. Yes.

Q. How long did you have that interest?

A. About three years. [223]

Q. The partnership had an interest in the Neptune at Long Beach? A. Yes.

Q. How long did you have that interest?

A. About a year.

Q. The partnership had an interest in Robbins' Bingo at Bayshore in San Mateo County, is that correct? A. Yes sir.

Q. You also owned the real estate there?

A. Yes.

Q. And how long did you have that interest? [224] A. About four years.

Q. By Mr. Wolver: The partnership had an interest in the Boulevard at Belmont Shores?



(Testimony of Sol Zemansky.)

A. Yes.

Q. How long had you had that interest?

A. About two years.

Q. The partnership had an interest in a piece of real property in Glendale bordered by San Fernando, Los Feliz and Central Avenue?

A. Yes.

Q. What was the cost of that piece of property?  
Mr. Chotiner: Objected to on the ground that it is immaterial.

The Referee: Overruled.

A. \$120,000.

Q. By Mr. Wolver: How long did you have that place?  
A. About 15 years.

Mr. Chotiner: That assumes a fact not in evidence, that he had that place.

The Referee: Overruled.

Q. By Mr. Wolver: How long did the partnership have it?  
A. About 15 years.

Q. By Mr. Wolver: Mr. Zemansky, did you keep a permanent record or any record of any unredeemed pledges?  
A. No. [225]

Q. Did you keep any inventory of any precious gems or other merchandise on hand?  
A. No.

Q. Could you tell at any time how much merchandise or how many unredeemed pledges you had on hand?  
A. No.

Q. Did you have large amounts of them?

A. At various times we have large amounts.

(Testimony of Sol Zemansky.)

Q. Did that amount to an appreciable sum, such as hundreds of thousands of dollars?

A. Yes. [226]

---

KLEINMAN'S EXHIBIT No. 1

No. 75000

Time—S., A., H., B., C., C. & S. of B., C. & S. of D.

Los Angeles, Calif.,.....

Under the terms and conditions herein set forth, and in consideration of ..... Dollars (\$.....) to me loaned by the firm of State Loan Office, I hereby pledge and deliver to them as security for the repayment of said loan, together with interest thereon, at the rate of .....per cent per month, from date hereof, the following described property, to wit: .....

I hereby promise to repay said loan, together with interest, at the office of State Loan Office, Los Angeles, Calif., one month after date of this instrument; this loan is made and accepted under the terms and conditions provided for in Sections 2 and 3 of Chap. 538 Stats. 1935, State of California, copies of the same being printed on the reverse side hereof and are hereby made a part hereof. I Have Read the Law Printed on the Reverse Side Hereof Relative to Interest Charges and Period of Redemption and Understand the Purport Thereof; pay-

(Testimony of Sol Zemansky.)

ment of any sum or sums after the date of the maturity of this note shall not extend or change the terms of said loan or this note unless expressed in writing on the face thereof; I hereby declare and warrant that I am the sole and absolute owner and or have the authority to pledge the above described property; and I hereby agree that the firm of State Loan Office shall not be responsible to me or my assigns for loss occasioned by fire, theft, robbery, hold-up, act of God or public enemy, and that their responsibility shall in no event or at any time exceed twenty-five per centum in addition to the amount loaned; I expressly waive diligence, demand, presentment for payment and notice of sale; if this instrument is executed by an agent the principal agrees to all of the above terms and further agrees that he is bound by all the subsequent acts of the said agent. The delivery of this pledge to the original pledgor with or without this receipt relieves the pledgee of all liability to any and all persons.

Signed.....  
Address.....  
Phone.....

(Reverse Side)

Interest Paid to	Date of Payment	Remarks
------------------	-----------------	---------

(Followed by ruled form not filled in.)

(Testimony of Sol Zemansky.)

STATE LOAN OFFICE

558 South Main Street

No. 75000

Los Angeles, Calif.,.....

If You Wish to Sell This Ticket Consult Us First  
Positively No Goods Delivered on Checks

Under the terms and conditions herein set forth,  
and in consideration of.....  
Dollars (\$.....) to me loaned by the firm of  
State Loan Office, I hereby pledge and deliver to  
them as security for the repayment of said loan, to-  
gether with interest thereon, at the rate of.....  
per cent per month, from date hereof, the following  
described property to-wit:.....  
I hereby promise to repay said loan, together with  
interest, at the office of State Loan Office, Los An-  
geles, Calif., one month after date of this instru-  
ment; this loan is made and accepted under the  
terms and conditions provided for in Sections 2 and  
3 of Chap. 538 Stats. 1935, State of California,  
copies of the same being printed on reverse side  
hereof and are hereby made a part hereof. I Have  
Read the Law Printed on the Reverse Side Hereof  
Relative to Interest Charges and Period of Redemp-  
tion and Understand the Purport Thereof; payment  
of any sum or sums after the date of the maturity  
of this note shall not extend or change the terms of  
said loan or this note unless expressed in writing on



(Testimony of Sol Zemansky.)

the fact thereof; I hereby declare and warrant that I am the sole and absolute owner and or have the authority to pledge the above described property; and I hereby agree that the firm of State Loan Office shall not be responsible to me or my assigns for loss occasioned by fire, theft, robbery, holdup, act of God or public enemy; and that their responsibility shall in no event or at any time exceed twenty-five per centum in addition to the amount loaned; I expressly waive diligence, demand, presentment for payment and notice of sale; if this instrument is executed by an agent the principal agrees to all of the above terms and further agrees that he is bound by all the subsequent acts of the said agent. The delivery of this pledge to the original pledgor with or without this receipt relieves the pledgee of all liability to any and all persons.

This receipt will not be honored by us unless signed by person who left above described goods.

No Goods Sent C. O. D.

To Redeem Pledgor Must Sign Here—

Signed.....

If you wish the time extended, send the interest due, and give the number of this ticket.

Clothing, wearing apparel, furs, trunks and suitcases or property of similar character can be redeemed within 7 Months from date issued. Diamonds, watches and jewelry can be redeemed within 13 Months from date issued.

Interest Payable Monthly.

(Testimony of Sol Zemansky.)

(Reverse Side)

State Loan Office

Sections No. 2 and 3 of Chap. 538, Stats. 1935

Section 2. It shall be a misdemeanor for any pawnbroker to charge or receive compensation at a rate in excess of three per cent per month on loans not exceeding three hundred dollars, or in excess of two per cent per month, on loans in excess of three hundred dollars, except that a Minimum Charge of Fifty Cents Per Month may be made in any case where the monthly charge permitted by this section would otherwise be less than fifty cents. [Printer's Note: Paragraph not legible because of holes being punched through printed matter.]

Section 3. Every pawnbroker shall retain in his possession every article pledged to him, except clothing, wearing apparel, furs, trunks and suit cases, and articles of similar character, for a period of one year after the last date fixed by his loan contract for redemption. He shall keep such exempted articles for a period of six months after the last date fixed for redemption by his loan contract.

The pledgor or his assigns may redeem the articles at any time during such period. If such article is not redeemed within the period thus allowed, the pawnbroker shall at the end of that period become vested with all right, title, and interest of the pledgor or his assigns therein, to hold and dispose of as his own property. All provisions of law relating to pledges and foreclosure of pledges in con-

(Testimony of Sol Zemansky.)

flict with this act shall not apply to pledges with pawnbrokers under this act. It shall be a misdemeanor for any pawnbroker to violate any provision of this section.

Below appears the date to which this note has been extended.

Interest Paid to	Date of Payment
(Followed by ruled printed form not filled in)	

### How to Redeem If Out of Town

Sign this ticket, hand with amount due to Railway Express Agency, and they will collect and forward goods to you.

### Fifty Cents Charges for Packing

[Endorsed]: Filed Aug. 22, 1940.

---

Mr. Wolver: Mr. Zemansky, when a loan was made on a pawn, the amount loaned on the pawn never equalled the value of the pawn?

A. No.

Q. It would be, in all events, less than the value of the pawn? A. Yes.

Q. And whenever Mr. Kleinman sold pawns for you, he always sold them at an amount greater than the amount you had in them by reason of prior loans?

A. There may be an occasion when we had a loss.

(Testimony of Sol Zemansky.)

Q. Do you recall any such case? A. No.

Q. Would it be fair to say with the exception of a possible few occasions, all other pawns were sold by him, any redeemed pawns, were sold at a profit? A. Yes. [234]

Re-Direct Examination

By Mr. Chotiner: [235]

Q. I believe you testified on cross-examination that you noticed a difference in Mr. Kleinman's health during the time that he was associated at the Provident Loan Association. Now, Mr. Zemansky, did you notice what his condition was beginning with the 1st of January, 1939, up to February 24, 1939, as to his state of nervousness?

A. Well, I wouldn't be qualified to answer that.

Q. Well, can you tell us what Mr. Kleinman's demeanor was as to the manner in which he walked at the Provident Loan Association during that period of time?

Mr. Wolver: That is objected to as being incompetent, irrelevant, and immaterial.

Mr. Chotiner: If the Court please, I am going to develop this.

The Referee: Can you answer that question?

A. I never noticed any difference. [236]

Q. Mr. Zemansky, directing your attention to the night when the Simons security was set aside for Simons, who was there at the Provident Loan Association so far as the Simons people were concerned?



(Testimony of Sol Zemansky.)

A. I believe Mike Lyman was there and Bill Simon and an attorney from Judge Pacht's office by the name of Ross, myself, Dave Zemansky, Abe Zemansky, Mr. Kleinman and Mr. Dienstag.

Q. Was Judge Pacht there that night?

A. I don't think he came over.

Q. You say Bill Lyman was there. Will you tell us approximately how much Mr. Lyman weighs.

A. You mean Bill Simon?

Q. Bill Simon.

A. If you ask me, I would say close to around 425 pounds.

Q. About how tall is he?

A. Close to six feet.

Q. Now, during the time that all those parties were present there, was there a discussion among you as to the giving of security to the Simons people?

A. When they came there that night, it had already been agreed on. [237]

Q. Was there ever any discussion after that, that night there?

A. There were several minor discussions.

Q. What were those minor discussions?

Mr. Dienstag: What about the question of Mr. Simons' weight and height.

Mr. Chotiner: It will develop very shortly. I can only take one thing at a time.

The Referee: What were the minor discussions you refer to?

A. There were several. It seems they had come

(Testimony of Sol Zemansky.)

up there for the purpose of reading the agreement. There were several objections and changes made in there, and that is about all the discussions there were.

Q. By Mr. Chotiner: Were there any loud voices used there that night?

A. Yes, I believe several times they spoke above a whisper.

Q. When you say they spoke above a whisper, to whom are you referring?

A. To Simon and Lyman.

Q. That includes one of the big fellows, is that right? A. Yes.

Q. When you say they were speaking above a whisper, we might have some levity, would you say it was in a loud [238] voice?

A. That is right.

Q. And that could be heard all over the second floor of the Provident Loan Association, is that right?

A. And the adjoining buildings also.

Mr. Wolver: I assume this levity is necessary, and unless it is more apparent and connected with this case than it is now, we can move to strike.

The Referee: It hasn't helped or hurt anybody so far.

Q. By Mr. Chotiner: Now, Mr. Zemansky, what was it that Mr. Simons said in this loud voice?

A. One of the prior discussions was as to the payment and the amount of money that was to be paid. We wanted to divide it over a period of 12

(Testimony of Sol Zemansky.)

months. That was one of the points of the discussion.

Q. What was it Mr. Simons said in that loud voice?

A. He said, "You would have to pay off or else." I believe that was about the substance of it.

Q. What did Mr. Simons say; did he say anything else besides "or else" in a very loud voice?

A. I can't recall anything else at present.

Q. When he told you you had to make the payment in one amount, what did you say, if anything?

A. I still wanted it my way.

Q. What did you tell him?

A. It couldn't be done that way. [239]

Q. When you told him it couldn't be done that way, did Mr. Simons' voice still continue loud?

A. Quite loud at all times.

Q. What did he say after you told him it couldn't be done that way?

A. I said my theory was correct.

Q. Your theory being correct, you mean you could not pay any more than you said you could pay?

A. Yes.

Q. During the time these conversations were taking place, Mr. Kleinman was present at the Provident Loan Association, is that correct?

A. He was on the floor but I don't think he was in the room. [240]

Q. By Mr. Chotiner: Did you say anything to Judge Pacht as to your ability to pay off the entire amount at that time?

A. I can't recall.

(Testimony of Sol Zemansky.)

Q. For the purpose of refreshing your memory, isn't it true that you told Judge Pacht you were financially unable to pay the money then?

A. Oh, yes, I told him I was not able to pay it then, certainly. [242]

Q. Now, the following day in your office, who was present?

A. I believe it was the following day or evening. Mike and Bill Simons, and myself and my two brothers.

Q. This conversation took place from 7 at night until around midnight? A. Yes.

Q. When the conversation started that night, were demands made of you for payment of the full amount?

Mr. Wolver: That is objected to as being hearsay. He has already stated Mr. Kleinman, if there, was in a separate room.

The Referee: How are you going to bring Kleinman in on this?

Mr. Chotiner: By the loud voices that were used, your Honor.

The Referee: All the time?

Mr. Wolver: Mr. Kleinman was having a nervous relapse at that time, your Honor.

Mr. Chotiner: If that is in the form of a stipulation, we will accept it.

The Referee: Objection overruled.

The Witness: What was the question? [243]

(Question read.)



(Testimony of Sol Zemansky.)

A. Yes, they always wanted the full amount.

Q. By Mr. Chotiner: Was that said in a loud voice? A. I don't recall.

Q. By the time you left there around midnight, had you reached an understanding with the Simons people as to the manner and method of payment?

A. Yes.

Q. Was that different from the manner that the Simons people had been asking for?

Mr. Wolver: Objected to as being incompetent, irrelevant, and immaterial.

The Referee: Overruled.

A. There were certain modifications.

Q. By Mr. Chotiner: Were the modifications that you were going to make for a payment plan instead of all at once?

A. On a payment plan.

Q. Now, directing your attention to the testimony on cross-examination about a revolving fund for money that would be advanced or used, in connection with the Kleinman transaction, what do you mean by that?

A. What I meant by that was the money that would accumulate from redemptions was going to be used to take in more loans, new loans.

Q. Now, when a redemption was made of a pledge that [244] had been given to Mr. Kleinman as security, and that pledge was withdrawn from the Kleinman security, did you have on hand any other pledges that could have been used to replace the one that had been withdrawn?

(Testimony of Sol Zemansky.)

A. Well, I don't know.

Q. Well, did you have any pledges in your place of business, other than those that had been rehypothecated to other individuals?

A. Yes.

Q. Then I take it, at the time when a pledge was withdrawn from the Kleinman security, you did have another pledge in the room there, is that correct?

A. Yes.

Q. Of approximately the same amount?

A. Yes, that is correct.

Q. Directing your attention to your examination and testimony on cross-examination that when business was good, you were short of cash. Now, every time that you were short of cash within six months prior to February 24, 1939, was that a result of business being good?

Mr. Wolver: That is objected to as being incompetent, irrelevant, and immaterial, not proper cross-examination.

Mr. Chotiner: Redirect.

Mr. Wolver: Not proper redirect examination, in that we limited our statement to no definite period.

The Referee: Overruled. [245]

The Witness: I imagine the rule would be, business would be good. In this case it wasn't. [246]

Q. What was the reasonable market value of your individual assets during 1938, and up to February 24, 1939?

(Testimony of Sol Zemansky.)

A. My own individual assets?

Q. Yes.

A. Not a thing except my automobile.

Q. That was worth under a thousand dollars?  
[250]

Mr. Wolver: That is objected to as leading and suggestive.

The Referee: Well, what was it worth?

A. About \$1500.

Q. By Mr. Chotiner: You testified on cross-examination that at various times you had large amounts of unredeemed pledges. Now, then, directing your attention to the period of six months prior to February 24, 1939, did you have large amounts of unredeemed pledges?

A. Not at that time. [251]

#### Recross-Examination

By Mr. Wolver:

Q. When you referred to a revolving security, didn't you mean that the money that would come in from redeemed accounts would be used to acquire pledges?

A. Yes, that was my understanding of it.

Q. And in that manner the security would be immediately replaced?

A. Yes, for example, we would always give new security.

Q. Mr. Zemansky, in answer to Mr. Chotiner's question you stated that the lack of money during the last six months was not by reason of good

(Testimony of Sol Zemansky.)

business. Did you know it at that time, during this six months period? Or during that period prior to February 24th, did you know at that time that the lack of money was due to no reason other than good business?

A. I knew we were refusing business. Loans were being offered, but we were unable to make them.

Q. Was that because a great number of loans were being [254] presented to you?

A. No more than the regular average.

Q. Did you know that the lack of funds at that particular time was for any different reason than was theretofore the reason for lack of money?

A. That question is not quite clear.

Q. I will withdraw it and try to clarify it. During that six months period prior to February 24, 1939, when you were refusing new loans for lack of money, did you know that the lack of money was a result of any condition in regard to your business other than it was from the condition prior to that six months period?

A. I didn't know. [255]

Q. How long did it take you to prepare your schedules in this case, your bankruptcy schedules?

A. How long?

Q. Yes.

A. I don't know the dates. It was filed in a skeleton way. [256]

Q. You didn't have that information available until you started to prepare these schedules?



(Testimony of Sol Zemansky.)

A. No.

Q. You didn't know your financial condition prior to that time?      A. No.

### Redirect Examination

By Mr. Chotiner:

Q. Did you understand that Mr. Dienstag and Mr. Ross were to collaborate in the drawing of the Simons agreement?

A. The way I understood it was that Mr. Dienstag was to work out his theory of it with Mr. Ross. That was about the way it was.

Q. Was Mr. Dienstag representing you in connection with the Simons matter?

Mr. Wolver: That is objected to.

Mr. Laugharn: I think we ought to have a direct answer to that.

The Referee: The witness can explain his answer if he wants to.

A. Well, I can say this, that I never employed him as my attorney. He was a son-in-law of Mr. Kleinman. He [257] never received pay from me.

Q. By Mr. Chotiner: In other words, Mr. Dienstag, in working with Mr. Ross in the preparation of this agreement, was looking out after your side of the case, is that right?

Mr. Wolver: That is objected to as calling for the conclusion of the witness.

The Referee: Overruled.

A. I would say that was the situation, because I had no other attorney to review the papers. [258]

(Testimony of Sol Zemansky.)

Recross-Examination

By Mr. Wolver:

Q. Mr. Dienstag never represented you as attorney?

Mr. Chotiner: That is objected to as calling for the conclusion of the witness.

The Referee: Overruled.

A. I just tried to explain the situation as to how he appeared. He went down to talk the matter over with [259] Judge Pacht. Mr. Dienstag was endeavoring to work out a contract with Mr. Ross. He never received any fees from me; nevertheless, I relied on his judgment because I had no other attorney to look it over.

Q. Mr. Dienstag never presented any bill to you, did he?      A. No.

Q. He never appeared in a court proceeding for you?      A. No.

Q. By the Referee: Mr. Zemansky, did Mr. Kleinman ever actually leave your employ, in other words, was he ever off the pay roll?

A. I don't think he was.

Q. You don't think he was?      A. No.

Q. Was he away from the place of business for any extended period of time?

A. Yes, he used to go up to San Francisco quite often, staying two or three days, sometimes a week.

Q. Was he away more than a week at a time?

A. I think so.

(Testimony of Sol Zemansky.)

Q. That was always with your permission?

A. Yes sir. [260]

Q. So far as you know, he remained on the pay roll at that time?

A. Yes. My brother Dave wrote the checks, so he would know definitely.

Q. You really don't know whether he was on the pay roll?

A. I am inclined to think he was always on the pay roll.

Q. The record shows that the attachment by Simons was levied February 27, 1939. I assume that before the actual attachment was levied you had some demand from Simons for payment of their money?

A. No, that is not entirely correct.

Q. It is not?

A. I had a conversation with him, and then it was we changed over the notes to six per cent. That was done about 30 days prior to the filing of this case. At the time those notes were changed, I really believed it was going to be all right, that they would go along with me, so when the suit came, I was very much surprised.

Q. What I am getting at, was the attachment the very first notice you had that Simons wanted his money at that time?      A. Yes.

Q. There had been no demand on you?

A. No demand. [261]

(Testimony of Sol Zemansky.)

Q. This instrument, which is in evidence as Trustee's Exhibit 4—may I ask, gentlemen, if this is merely a copy or is that an executed original?

Mr. Wolver: That is an executed original. May I see it to be sure? No, this is a copy.

The Referee: Do you have the original?

Mr. Laugharn: I don't know whether this is an original or not. This has Mr. Kleinman's signature on it, but as to whether or not it is entirely executed as an original, it does not seem to be.

Q. By the Referee: Mr. Zemansky, this instrument bears date February 24, 1939. You previously testified you signed it in the City of San Francisco? A. Yes.

Q. Did you sign it on the 24th day of February, 1939?

A. The only way I would be able to tell, I would have to find out from the St. Francis the date I was there, at the St. Francis Hotel. That's the only way I can fix the exact date.

Q. You don't know whether you signed it on the 24th or [262] not? A. I don't know.

Q. When you signed it, had it been signed by any of the other parties to the contract?

A. You mean by my two brothers?

Q. Your two brothers and Mr. Kleinman.

A. I don't recall whether Mr. Kleinman signed it right there or not, but my two brothers, Dave and Abe, signed it in the office of the Provident the night that the Simons boys had their conver-



(Testimony of Sol Zemansky.)

sation there. That is the night their signatures were affixed to it.

Q. Then they signed it after you did?

A. After I did, yes.

Q. Now, how long did you remain in San Francisco on that trip?

A. I believe I was there two or three days.

Mr. Laugharn: Did the Court fix the date of that evening?

The Referee: No, I was just coming to that.

Q. You don't know whether you stayed there more than two or three days?

A. I don't know.

Q. How long had you been there when you signed the agreement?

A. The following morning.

Q. The day after you got there? [263]

A. If I got in that morning, I signed it then; if I got in that night, if I drove in the machine, the following morning I signed the contract.

Q. Would you happen to remember the day of the week it was? A. No, I don't.

Q. When you returned to Los Angeles, was your place under attachment? A. No.

Q. How long after you returned to Los Angeles did the Sheriff walk in?

A. A few days after.

Q. A few days after? A. Yes. [264]

Q. You already testified, when you learned of the attachment, you telephoned to Mr. Kleinman long distance? A. Yes.

(Testimony of Sol Zemansky.)

Q. You don't know whether he was up there while you were there, or whether he went up after you came down, or just how he came up?

A. I don't know.

Q. You don't know?           A. No.

Q. But naturally you knew he was in San Francisco when you called him there? [266]

A. I called him in San Francisco.

Mr. Laugharn: From the general questions of the Court, apparently one date in question can now be established with certainty, and that is that the date upon which this witness registered at the St. Francis Hotel is the same date as the date when he actually signed this contract.

The Witness: If I went in my machine, it would be the following day. If I went up on the train it would be the same day. [267]

---

LEO KRAVITZ

called as a witness on behalf of the Trustee, having been first duly sworn, testified as follows:

The Referee: Your name, sir, is what?

The Witness: Leo Kravitz.

Direct Examination [271]

By Mr. Chotiner:

Q. How long did you work at the Provident Loan Association office?           A. Five or six years.

(Testimony of Leo Kravitz.)

Q. Was that the last five or six years prior to the bankruptcy proceedings? A. Yes sir.

Q. What was the nature of your duties?

A. Loan clerk.

Q. By Mr. Chotiner: Do you know Mr. Sam Kleinman? A. I do.

Q. How long have you known him approximately? A. 10 or 12 years. [272]

Q. What were the duties of Mr. Kleinman at the Provident Loan Association during the last two years that the place was in business?

A. Selling diamonds, working here and working there, all over.

Q. When you say "working here and working there and all over," what does that comprise?

A. He was making loans once in a while, and selling jewelry to people, once in a while and selling diamonds.

Q. Was there an employee there at the Provident by the name of Harry Cussick? A. Yes sir.

Q. And when did he leave his employment at the Provident?

A. Oh, about a year or so before the bankruptcy.

Q. And in relation to the time that Mr. Cussick left the employ of the Provident, what were Mr. Kleinman's duties after that?

A. The same as it was before he left the Provident.

Q. And did he spend very much time as a loan clerk [273] after Mr. Cussick left the employ?

A. He spent a little more.



(Testimony of Leo Kravitz.)

Q. Now, during the time that Mr. Kleinman was working there as a loan clerk, did you notice whether he ever looked in the cash drawer?

A. Just off and on.

Q. By off and on, would you relate the circumstances under which he would look in the cash drawer?

A. Well, he came down in the morning, talked to me a little bit, and then walked over to the cash drawer and looked into it.

Q. Did he look into the cash drawer at times when there was no customer there to borrow money?

A. Yes, he looked in there, then he looked in there when there was a customer in there to borrow money.

Q. And what was the cash drawer used for, what purpose did the cash drawer serve?

A. To pay money out.

Q. Was there any other place at the Provident where money was kept for the purpose of making loans other than the cash drawer? A. 558.

Q. That is, 558 South Main Street, you are referring to? A. Yes sir.

Q. But at the Provident Loan Association office, was [274] there any other place other than the cash drawer?

A. No sir, not that I know of.

Q. Do you remember the occasion when pledges were set aside for Mr. Kleinman?

A. I do.



(Testimony of Leo Kravitz.)

Q. And was that sometime around February 24, 1939?      A. Around that time, yes.

Q. Now, prior to the time when the security was first set aside for Mr. Kleinman, who had to open up the vault and the vault door in the morning?

A. I opened it and my brother-in-law opened it.

Q. Who is your brother-in-law?

A. Mr. Sego.

Q. Where was the key kept prior to the time that the security was given to Mr. Kleinman?

A. Right in a little drawer in the desk, but you pressed a button for the gate.

Q. Now, prior to the time that the security was given to Mr. Kleinman, did Mr. Kleinman ever open the vault or the vault door, to your knowledge?

A. You mean open up the vault?

Q. Yes. [275]

A. No sir.

Q. Now, after the security was given to Mr. Kleinman, did you follow the same proredure in opening up the vault and the vault door as you did before?      A. Yes sir.

Q. Was the key kept in the same place?

A. Yes sir.

Q. Was that key available to all the employees of the Provident?      A. Yes sir.

Q. Did you ever have any conversation with Mr. Kleinman prior to his obtaining security on the subject of available money at the Provident?

A. I don't know what you mean.

(Testimony of Leo Kravitz.)

Q. By available money, I mean money sufficient with which to make loans.

A. You mean, if I didn't have any money in the cash box, is that the question you want to ask me?

Q. I want to know whether you and Mr. Kleinman ever said anything to one another regarding that subject.

A. When we needed money I used to go to Mr. Kleinman to get a little money to make a loan. If he didn't have it I would call up Dave Zemansky.

Q. Did Mr. Kleinman ever say anything to you about the condition of the cash drawer?

A. He used to look in it once in a while. He says, [276] "Are you going to make a loan?"

Q. Prior to the time that Mr. Kleinman first obtained the security, did you ever have any conversation with Mr. Kleinman regarding the subject of there not being sufficient money in the cash drawer?

A. Off and on, yes sir.

Q. What was that conversation or conversations?

A. Well, Mr. Kleinman looked in the cash drawer and there was no money to make a loan. I said, "Well, I will get in touch with Dave," and Dave used to send him up some money.

Q. What did Mr. Kleinman say, if anything?

A. Then if a loan should happen to come in be-

(Testimony of Leo Kravitz.)

fore Dave would send him up some money I used to go to Mr. Kleinman and ask him for the money.

Q. What did Mr. Kleinman say on those occasions, if anything?

Mr. Wolver: Before you have that answered, may we have that point marked?

The Referee: Yes.

Q. By Mr. Chotiner: What did Mr. Kleinman say, if anything, on those occasions when you would ask him for money? A. Get it off of Dave.

Q. Were there ever occasions when you would call up Dave for money and Dave did not send it up, and a customer [277] would come in to make a loan?

A. Yes, then I would go over and ask Mr. Kleinman for the money.

Q. Did those occasions ever happen?

A. Very often.

Q. And did Mr. Kleinman always give you the money then? A. Not all the time.

Q. Did Mr. Kleinman ever refuse to give you any money with which to make loans when you asked him for it? A. Once in a while.

Q. Was that prior to the time that the security was set aside for Mr. Kleinman?

A. Before and after. [278]

Q. Well, for the purpose of refreshing your memory, isn't it true that Mr. Kleinman told you on an occasion before the security was set aside for him, that he had a business proposition he

(Testimony of Leo Kravitz.)

would like to submit to the Zemanskys, and you told him there was no sense in doing it, as they didn't have any money?

A. That the Zemanskys didn't have any money?

Q. Yes. Did you ever tell that to Mr. Kleinman? [279]      A. No sir.

Q. By Mr. Chotiner: Were there occasions prior to Mr. Kleinman obtaining security, when loans were refused to customers for the reason that there was not sufficient money in the cash drawer with which to make the loans?

A. I don't quite understand that question.

Q. Well, did you ever turn down loans because there was not sufficient money in the cash drawer?

A. Yes sir.

Q. Was that before Mr. Kleinman got the security?      A. Yes sir.

Q. And were there very many occasions like that? [280]      A. Off and on.

Q. And did those occasions arise after you had called Dave Zemansky for money?

A. Yes sir.

Q. And did those occasions arise after you asked Mr. Kleinman for money?      A. Yes sir.

Q. Did Mr. Kleinman ever say anything to you about his difficulty in having his account taken care of in any way?

Mr. Wolver: That is objected to as being uncertain and ambiguous.

The Witness: What account?



(Testimony of Leo Kravitz.)

Q. By Mr. Chotiner: The money that was owing to him [281] by the Zemanskys.

The Referee: The objection is overruled.

A. I never knew he had any difficulty. He had never spoken to me anything about his account.

Q. By Mr. Chotiner: All I am trying to find out is this, whether you remember any conversation of any kind had with Mr. Kleinman and yourself regarding the subject matter of the business relationship between Kleinman and the Zemanskys.

A. Well, the only business transaction I had with Mr. Kleinman was, Mr. Kleinman told me to keep the numbers right on the pledges. [282]

Q. By Mr. Chotiner: Were there occasions when there wasn't very much for the employees to do?      A. Yes sir.

Q. And they would sit around and talk, is that correct?

A. Yes, we used to sit around and talk.

Q. Did you and Mr. Kleinman ever sit around and talk on any of those occasions?

A. We used to talk about diamonds and the loans.

Q. Did you ever talk about the condition of the business at the Provident?

A. Yes, we talked about it.

Q. What was your conversation?

A. The condition of the business and how you are going to make loans.

Q. Who said that?

(Testimony of Leo Kravitz.)

A. There is no money in the till, Mr. Kleinman used to say that.

Q. Give us the rest of the conversation.

A. I said, "Well, Sam, if we can't make any loans, I will get some money off of Dave or get a little money off of you if a loan comes in." In the meantime, a redemption would come in and I would loan that money, and I wouldn't have to ask him. This is just casual talk we used to have [284] all day long.

Q. Did those conversations take place prior to the time that security was set aside for Mr. Kleinman?

A. Before and after.

Q. Now, did you ever have any conversation with Mr. Kleinman before the security was set aside for him, regarding the subject matter of the Zemanskys being able to operate the Tango games.

A. Off and on.

Q. What was that conversation?

A. He used to ask me once in a while if that was going to open up.

Q. What did you say, if anything?

A. I told him they would probably be opened up in about a week or so.

Q. Give us the rest of the conversation.

A. That is about all.

Q. Did you ever talk with Mr. Kleinman about the subject of if the Tango games were operated, that the Zemanskys could work things out?

(Testimony of Leo Kravitz.)

A. I told him that if the Tango games would open, it would be a great help to the firm.

Q. What did Mr. Kleinman say to that, if anything?

A. He said, "It will be all right."

Q. And did those conversations take place before the security was set aside for Mr. Kleinman?

[285]

A. Before and after.

Q. Now, did Mr. Kleinman ever tell you that if the Zemanskys were able to operate the Tango games they could work things out, otherwise they could not?

A. He told me—what was that question?

The Referee: Read it, please.

A. I don't think he told me that.

Q. By Mr. Chotiner: Now, then, directing your attention to the time when the security was set aside for Mr. Kleinman, who told you to do it?

A. Sol Zemansky.

Q. And who was present when the security was set aside for Mr. Kleinman?

A. Mr. Dienstag, Mr. Sego; that's about all.

Q. Where was the transaction handled?

A. At the Provident Loan Association.

Q. Was that in the daytime or at night?

A. Right after dinner.

Q. Pardon me; I didn't hear the answer.

A. Right after dinner.

Q. Was that after the Deputy Sheriff had been in there?

(Testimony of Leo Kravitz.)

The Referee: Just a second. The Court has to know what this gentleman means by dinner. Some people still eat their dinner at noon. What do you mean? A. 7 o'clock. [286]

The Referee: 7 o'clock in the evening.

Mr. Wolver: May I have that last question again?

(Question read as follows: "Was that after the Deputy Sheriff had been in there?")

Mr. Wolver: I am going to object to that question on the ground that it assumes something not in evidence. There is no testimony whatsoever about the Deputy Sheriff being there before the first security was picked out for Mr. Kleinman. There was a Deputy Sheriff there at the time of the Simon transaction, March 1st or 2nd.

The Referee: I know, but there is evidence here that there was a Deputy Sheriff in there at some time or other, and this question was before the Sheriff went in there.

Mr. Wolver: I think he said while the Sheriff was there.

Mr. Chotiner: I asked whether it was after the Sheriff was there.

The Referee: The objection is overruled. Perhaps we should find out definitely whether this gentleman knows anything about the Sheriff being there.

Q. By Mr. Chotiner: Do you recall the Deputy Sheriff being at the Provident Loan Association around that time?



(Testimony of Leo Kravitz.)

A. Not around that time.

Q. When was it that the Deputy Sheriff came into the place?      A. Why, after that time. [287]

Q. In other words, the Kleinman security was set aside for him before the Deputy Sheriff came in?      A. Yes sir.

Q. Now, will you explain to the Court the procedure that you followed in setting aside the security for Mr. Kleinman, just exactly how you handled the jewelry and the boxes and what was done on that occasion?

A. I went in the vault and got the largest loans. We got about five or six drawers of loans, which amounted to \$100,000, I think.

Q. Where did you take them?

A. We put them in the corner.

Q. In what corner?

A. I think the northeast corner of the vault.

Q. Before you put them in the northeast corner of the vault, did you take the drawer of pledges from the vault to any other office?

A. I think I took them in to Miss Brown's office.

Q. What did you do when you got to Miss Brown's office?

A. I gave them to Mr. Dienstag and he ran them up on the adding machine.

Q. When you say you gave them to Mr. Dienstag, what do you mean by that?

A. He ran the amount on the adding machine.

(Testimony of Leo Kravitz.)

Q. Who would call off the amounts?

A. I think I called the amounts. [288]

Q. And who held the drawer of pledges at the time you were calling off the amounts?

A. I think I gave them to him, I would give it to him, and he would put it in another drawer, if I am not mistaken.

Q. Was the physical possession of the box ever turned over to Mr. Kleinman or Mr. Dienstag while you were running off those pledges?

A. What do you mean by "physical"?

Q. Did you ever give the box with the pledges to Mr. Kleinman or to Mr. Dienstag?

A. When we finished, I had the pledges, he had all the amounts and everything else, and I told him I would put them in a certain corner, I would put them in that corner.

Q. Who put them in the corner, you or Mr. Dienstag?

A. He helped to carry them in and I put them in the corner, I think.

Q. Did you ever turn over the jewelry to Mr. Kleinman physically or to Mr. Dienstag physically?

A. No, Mr. Dienstag told me where to put them. He says, "Keep them all together," and I just put them all together that way.

Q. At the time that the pledges were being run off on the adding machine, what was Mr. Kleinman doing, if anything? [289]

(Testimony of Leo Kravitz.)

A. He was outside reading a paper, or sitting at a desk there at the door.

Q. When you say outside, you mean outside the office?      A. Outside the office.

Q. Was he walking around at that time?

A. Just as usual, he always walks around, walks up and down always.

Q. When you say "just as usual, walks up and down all the time," would you describe that to the Court.

A. I have known him, have been very close to him for about five or six years, and he always walks and holds his hand on his head and just walks all the time. I was at his home, was at San Francisco, and he does the same thing.

Q. Did you notice whether or not Mr. Kleinman appeared to be nervous on that occasion when the pledges were being set aside for him?

Mr. Wolver: That is objected to as calling for the conclusion of the witness:

The Referee: I think it calls for a conclusion. You can ask this witness to describe what he saw, but whether he was nervous probably is a conclusion.

Mr. Wolver: I think he should be allowed to answer to keep this record down. I don't think it is important. I think I will withdraw the objection.

The Referee: Objection withdrawn. Read the question. [290]

(Question read.)

(Testimony of Leo Kravitz.)

A. Not more than any other time.

Q. By Mr. Chotiner: Did you notice whether or not Mr. Kleinman was excited on that occasion?

A. No sir. [291]

Q. By Mr. Chotiner: Do you remember the occasion when the security was set aside for the Simon people?

A. Very little of it.

Q. Has anything happened since that occasion to diminish your memory of the situation?

Mr. Wolver: That is objected to as calling for the conclusion of the witness, incompetent, irrelevant, and immaterial.

The Referee: Overruled.

The Witness: What was the question?

The Referee: Read it.

(Question read.)

Mr. Dienstag: I submit the question is unintelligible.

The Referee: That is for the witness to say.

Q. By Mr. Chotiner: Do you understand the question? A. No.

Q. I will withdraw it then. Were you present at any time on that occasion when the security was set aside for the Simon account, in which Mr. Kleinman had a conversation with Mr. Sol Zemansky regarding the subject of using some of his security?

A. I think Sol Zemansky told me to take a box of Mr. [292] Kleinman's pledges and give it to Lyman.



(Testimony of Leo Kravitz.)

Q. When Mr. Sol Zemansky told you to do that, what did Mr. Kleinman say, if anything?

Mr. Wolver: That is objected to as assuming a fact not in evidence, that Mr. Kleinman was present. There is no evidence that Mr. Kleinman was present, your Honor.

The Referee: Obviously, he would have to be present if he said anything. It is overruled. The question is, when Sol Zemansky told you to take a box of Kleinman's pledges, what did Mr. Kleinman say, if anything, in your presence?

A. I think Mr. Kleinman says we can make it up and give a fresh bunch of pledges.

Q. By Mr. Chotiner: Did you use some of the boxes of jewelry that had been set aside for Mr. Kleinman, in making up the Simon security?

A. What was that question again?

The Referee: Read it, please.

(Question read.)

A. Yes sir. [293]

By Mr. Chotiner:

Q. What did you do, Mr. Kravitz, when a customer would come in and want to make a redemption of a pledge and that was one of the pledges that had been set aside for Mr. Kleinman?

A. I used to go in the vault and get it and give it to the customer.

Q. What did you do with the money that the customer gave you?

A. I used to put it in the cash box.

(Testimony of Leo Kravitz.)

Q. What did you use the money for after you put it in the cash box?      A. Loaned it out.

Q. At that time, did you take another pledge and put it in place of the one that you had taken from Mr. Kleinman's security?

A. The following day or two, or three days later, I would.

Q. But at that same time, did you ever take another pledge and put it in place of the one that you had taken from Mr. Kleinman's security?

A. No sir.

Q. When you put the money in the cash drawer, on one of those redemptions, did you put it in any other section of the cash drawer than the place where you would put any of the money?

A. In the same drawer. [294]

Q. Did Mr. Kleinman ever effect any of those redemptions?

A. What do you mean by that question?

Q. I will withdraw the question. Mr. Kravitz, did Mr. Kleinman ever make a redemption of a pledge that had been set aside to him for security?

A. Yes sir.

Q. What did he do with the money when he received it from a customer?

A. Put it in the drawer.

Q. In the same manner that you had done?

A. Yes sir.

Q. And was that money used over again for the purpose of making new loans to customers?

(Testimony of Leo Kravitz.)

A. Yes sir.

Q. By Mr. Chotiner: Directing your attention to Trustee's Exhibit No. 8, that is a form of pawn ticket that was used at the Provident Loan Association, is that correct? A. Yes sir.

Q. And was that the form that was used after the security had been set aside for Mr. Kleinman?

A. Yes sir. [295]

Q. And is it true that the longer piece was the one that was given to the customer?

A. Yes sir.

Q. Then there were duplicate stubs, is that correct? A. Yes sir.

Q. What was done with one of the stubs?

A. One stub went to Mr. Kleinman and one stub we kept; yes, that is right, one stub went to Mr. Kleinman and another stub book set aside.

Q. When was it that you would give the stub to Mr. Kleinman?

A. Well, we would give it to him in a couple of days later, three or four days later.

Q. Did you give him the stub at the time that you gave the long piece to the customer?

A. No sir.

Q. Then the stubs were kept in a book together, is that correct? A. Yes sir.

Q. And then when more security would be set aside for Mr. Kleinman, every few days, you would pull those stubs from the book and give them to Mr. Kleinman? A. That is correct. [296]

(Testimony of Leo Kravitz.)

Q. By Mr. Chotiner: What would be done with the other stub?

A. The other stub would be filed away.

Q. Was any segregation made of the second stub, insofar as pledges that had been set aside for Mr. Kleinman was concerned?

A. Any segregation?

Q. Of the second stub?

A. Not as I know of.

Q. Now, after the customer had left, you found yourself [297] in the possession of two stubs for each loan, didn't you? A. Yes sir.

Q. Now, tell me where did you put those two stubs?

A. One stub Mr. Kleinman kept when he would get his pledges.

Q. But, until he would get it, where did you put it?

A. We would keep it in the regular book.

Q. In the regular book? A. Yes sir.

Q. Well, you mean a loose leaf book?

A. A loose leaf book.

Q. Did you have any particular name for that book? A. No sir.

Q. What did you men refer to, how did you call it when you talked to one another about that book?

A. We would always know there was nothing else in that book.

Q. Where did you keep that book?

A. Right on the desk.



(Testimony of Leo Kravitz.)

Q. Where did the other stub go; as soon as the customer left, what did you do with that?

A. You mean the other part that Mr. Kleinman would not get?

Q. Yes.

A. I think they used to be kept right around in one of those jewelry drawers. [298]

Q. Did you have those in a loose leaf book?

A. No sir.

Q. You just put those in a drawer?

A. Yes sir.

Q. All right. Now, when it became time then to give Mr. Kleinman security, would you give him all of the stubs that were in that loose leaf book, or just some of them?

A. We would give him, if it was three or four thousand dollars worth of loans, maybe we would pull out 15 or 20 pledges, that would make that amount and try to give him the largest ones.

Q. And the rest you would leave?

A. The rest we would leave.

Q. In the loose leaf book?

A. That is right.

Q. Now, when a customer came in to redeem, tell me what you would do. You would go in the safe and get the jewelry, I know that, but what would you do about the stub?

A. Well, we would look in certain boxes, to see where it belonged. If it belonged in the Simon box, we would look in the Simon box; we would have the

(Testimony of Leo Kravitz.)

number on the outside where we could tell what they were and the initials on the box. If it would be Simon, we would put it in the Simon box; if it would be Kleinman's, we would put it in the Kleinman box, and if it was Bob Gans, we would put it in Bob Gans' drawer. [299]

Q. Were there still others that didn't belong either to Simon, Kleinman or Gans?

A. Yes sir.

Q. That belonged to the company?

A. Yes sir.

Q. Taken out of there?           A. Yes sir.

Q. What, if anything, would you do about the stubs that were put in the drawer?

A. They would be kept separately.

Q. When a customer would come in, would you go out and get that stub also out of the drawer?

A. It would be on the shelf there; everything was right out in front.

Q. You would go and get that one too?

A. Yes sir.

Q. Is that right?           A. Yes sir.

Q. Then you would have before you the customer's receipt that he would sign before getting his jewelry, and you would have two stubs again?

A. Yes sir.

Q. Wouldn't you?           A. Yes sir.

Q. Now, after you were through with the customer that time and he redeemed his pledge, what did you do with the [300] stub?

A. Put it back on the shelf where it belonged.

(Testimony of Leo Kravitz.)

Q. What would you do with the one, for instance, that belonged to Mr. Kleinman?

A. Put that right back too.

Q. In the book again? A. Yes sir.

Q. Did you take it out of the book, make the redemption and then put it back in the book?

A. No, we would leave it in there.

Q. You wouldn't take it out at all?

A. No sir.

Q. You would simply stamp it or mark it "Redeemed"? A. That is right.

Q. Would you put any mark on the one that you put back on the shelf?

A. No sir; we would put a mark on the ticket that had Mr. Kleinman's name; I used to mark that number down.

Q. What do you mean by "the ticket"?

A. This ticket right here.

Q. You mean the customer's ticket?

A. The customer's ticket.

Q. Where would you file the ticket away?

A. Right on the file with the other books.

Q. What do you mean by that; I don't understand.

A. The Gans tickets, the Simon tickets, or our [301] customers' tickets.

Q. You mean you had a spindle?

A. Yes, a spindle.

Q. You just put them on there?

A. Yes sir.

(Testimony of Leo Kravitz.)

Q. Until at some later time they would be taken up and taken care of?

A. The next morning they would be taken care of.

Q. I am still not clear on what you did with the stub that you put on the shelf or in the drawer, whichever it was; when the customer came in to redeem, what would you do about that; did you actually go and take that out; or did you just leave it there?

A. I would have to take it out to compare the signature, the signature of the customer. We would have his signature and he would come in and sign it and we would have to compare the signature, to see whether the jewelry belonged to him or not.

Q. On a pledge that had been given to Mr. Kleinman, wasn't the customer's signature on that stub?

A. Yes sir.

Q. Couldn't you compare it from there?

A. Yes sir.

Q. Why didn't you?

A. I did; I would have to.

Q. Maybe I don't understand you; you started by [302] telling me when a customer came in and got a loan, after he was gone you found yourself with two stubs.

A. Yes sir.

Q. One you put in a loose leaf book.

A. Yes sir.

Q. And the other you put in a drawer or a shelf, you said. What was it, a drawer or shelf or what?



(Testimony of Leo Kravitz.)

A. A little compartment; they are against the wall where all the stubs would fit in.

Q. Were they filed by number, by name or what?

A. Filed by number.

Q. By number. Now, when the time for redemption came, did you actually go and get that stub out of the compartment and also refer to the stub that was in the loose leaf book?

A. No sir; we didn't go to the stub in the book.

Q. The loose leaf?           A. In the shelf.

Q. Where did you put the book, was that put on the shelf?           A. Yes sir.

Q. Where did the other stub go, that was put on the shelf too?           A. No sir.

Q. Where did that go?

A. After we were through with it, we would put it [303] behind the showcases or something.

Q. When were you through with it?

A. After the girl would make out her record.

Q. After the loan was redeemed?

A. After the girl would make out the record of redemption.

The Referee: Perhaps it is not important, but I can't get it straight.

Mr. Chotiner: I think I can clear it up by Mr. Kravitz' brother-in-law.

The Referee: Maybe it is not important.

Mr. Chotiner: It is to a certain extent, your Honor.

(Testimony of Leo Kravitz.)

Q. Mr Kravitz, there were two sets of stubs, is that correct?      A. Yes sir.

Q. One set—if counsel will permit me to ask a few leading questions—what was done with the one set of stubs; where did you keep them?

A. One set of stubs Mr. Kleinman would get.

Q. Before Mr. Kleinman got them, where did you keep them?

A. We would keep them in a desk, or lying around on the desk somewhere.

Q. Tell us how you actually handled the pledge books up there; you had a place where you kept those books, didn't you? [304]      A. Yes.

Q. Where was it? I will ask it this way. Where did you keep the actual book that contained one set of stubs?

The Referee: Have you got another witness on this point?

Mr. Chotiner: Yes.

Mr. Laugharn: We have another witness, but this man practically ran the business.

The Referee: I don't know whether you are going to get from him any intelligent description of how that thing was handled.

Mr. Chotiner: Maybe the witness can answer the question now.

Q. Where did you keep the book that contained one set of stubs?      A. On the desk.

Q. Where was that desk?

A. Right in the office where we kept the money.

(Testimony of Leo Kravitz.)

Q. That is the cashier's portion, is that right?

A. That is right.

Q. When the stubs would be pulled out of that book and given to Mr. Kleinman, where did you keep the Kleinman stubs?

A. In a little compartment.

Q. Where was that compartment?

A. Right in the same little office. [305]

Q. Were the Kleinman book of stubs kept together with the Provident book of stubs?

A. No.

Q. Where were they kept, in the same place?

A. The same place, yes sir.

Q. But in separate books, is that the situation?

A. Yes sir.

Mr. Wolver: That is leading and suggestive.

The Referee: You have got to lead this witness; there is no question about it.

Mr. Wolver: May I be heard on that, your Honor. The witness has testified to one set of facts, then counsel in his question brings in another. He said they were kept in a compartment separate from the others, and now counsel says "in the same place." He has already told us it was in a separate compartment.

The Referee: I am satisfied, gentlemen, that you are not going to get any helpful assistance from this witness on this. He just hasn't got the faculty of explaining things; that's the trouble, he can't picture it.

(Testimony of Leo Kravitz.)

Q. By Mr. Chotiner: Where was the second books of stubs kept?

Mr. Dienstag: I think——

The Referee: Please don't interfere; this is difficult enough.

A. I think the second book of stubs was kept behind [306] the wall case, behind the jewelry.

Q. By Mr. Chotiner: When a redemption was made of a pledge, did you go to the second book of stubs that was kept behind the wall case?

A. No sir, we didn't.

Q. Was any segregation made in the second book of stubs between the Kleinman pledges and those that were not set aside for him?

A. No, there was not.

Q. Mr. Kravitz, was any change made in the form of pledge tickets that were used at the Provident Loan Association at any time during the last two years of the business?

A. This is the change right here.

Q. And when did this one come into being, being Trustee's Exhibit 8?

A. About a year or so.

Q. A year or so from when?

A. I don't remember.

Q. You don't remember the date? A. No.

Q. Did you ever use any other form of ticket in reference to the Kleinman transaction other than Trustee's Exhibit 8? A. Yes sir.

Q. What was the difference between that form and [307] Trustee's Exhibit 8?



(Testimony of Leo Kravitz.)

A. It didn't have a duplicate.

Q. Didn't have a duplicate stub?

A. No sir.

Q. Other than that, were they the same?

A. Yes sir.

Q. Now, on the ones that didn't have the duplicate stubs, what procedure did you follow in reference to the Kleinman pledges?

A. They were put in with the others.

Q. When you say they were put in with the others, to what are you referring?

A. If we would have a redemption, we would have mixed them all together, following the number.

Q. When the pledges were set aside for Mr. Kleinman, and you were not using the duplicate stubs, what did you do with the stub that was contained in the book?

A. You mean the original stub?

Q. Yes.           A. They were all put together.

Q. Were they kept in a separate book for Mr. Kleinman?           A. Yes sir.

A. And at the time the loan was first made, the stubs were all kept together, is that correct?

A. Yes sir. [308]

#### Cross Examination

By Mr. Dienstag: [309]

Q. And did you and Mr. Sego ever confer with Mr. Kleinman about the value of jewelry?

A. Yes sir.

(Testimony of Leo Kravitz.)

Q. He was, was he not, sort of a final judge on the subject of values? A. Yes sir.

Q. And if you had any doubts at the Provident about the value of jewelry, you would call in Mr. Kleinman? A. Yes sir.

Q. And that was most of his work that was connected with the loan department, was it not?

A. Yes sir.

Q. That together with the sale of jewelry to the jobbers, that is, brokers, rather, and retail jewelry customers, consisted of the bulk of his duties? A. Yes sir. [310]

Q. He had very little to do with the actual making of pledges, is that correct?

A. Just off and on. [311]

Q. Mr. Kravitz, you were at the Provident as a loan clerk from the time that it was opened at Seventh and Hill, were you not? A. Yes sir.

Q. And it was about at that time, was it not, Mr. Kravitz, that Mr. Zemansky—Mr. Kleinman came to the Zemansky Brothers?

A. Just about that time.

Q. When they opened up their new place at Seventh and [312] Hill? A. Yes sir.

Q. It was approximately in October or November of 1935? A. Yes sir.

Q. During all this period of time, from the end of 1935 until the time that the petition in bankruptcy was filed, there arose occasions, did there not, when there was insufficient money in the cash drawer to make loans? A. Yes sir.

(Testimony of Leo Kravitz.)

Q. And that was all through that period?

A. Well, it wasn't as bad.

Q. Well, there was less money, let us say, later on than there was in the beginning?

A. That is right.

Q. But at all times there were occasions when there was insufficient money in the cash drawer to make loans?

A. Yes sir.

Q. On those occasions, you would have to phone Mr. Dave Zemansky, would you not, at 558 South Main Street?

A. Yes sir.

Q. And ask him to bring some cash?

A. Yes sir.

Q. If it was not there, you would ask Mr. Kleinman for some cash?

A. Yes sir. [313]

Q. On a great many occasions, he let you have that, didn't he?

A. Yes sir.

Q. When he let you have that cash, did you give him any receipt for it?

A. I would give him an I. O. U. for it.

Q. Now, I am going to show you—will you look at this, please, Mr. Kravitz, showing the witness a piece of paper with the words “June 8, 1939, I. O. U. \$350, Zemansky Brothers, by Leo Kravitz.” Do you recognize this piece of paper and the words written on it?

A. Yes sir.

Q. Whose handwriting is that, Mr. Kravitz?

A. That is all my handwriting.

Q. On that occasion, you gave that, did you not, to Mr. Kleinman to evidence the fact that you had

(Testimony of Leo Kravitz.)

asked him for money and that he had given it to you?      A. Yes sir.

Q. This was one of the cases with regard to which you have testified on which Mr. Kleinman loaned money to the Zemanskys?      A. Yes.

Q. And that happened from the end of 1935 until the time that the petition was filed, until the place was closed?      A. Yes sir. [314]

The Witness: Mr. Kleinman first came there in 1935. I don't think I asked him for any money from the start, maybe a year or so, or six months.

The Referee: After he started?

A. Yes sir.

Q. By Mr. Dienstag: Then I will correct that. From a period about six months after he started. [315]

A. About six months, or a little better.

Q. That would be about the middle of 1936?

A. That is right.

Q. I think you answered yes to my question with regard to whether or not you ever observed Mr. Kleinman as he was selling jewelry to brokers?

A. Yes sir.

Q. Of your own knowledge, do you know whether he sold that in large amounts, that is, large values?      A. Large and small.

Q. Well, did he sell many dollars worth, that is, thousands of dollars worth of jewelry in that fashion?      A. Yes sir.



(Testimony of Leo Kravitz.)

Q. You were employed by Zemansky Brothers right up to the time that the place was closed by the petition in bankruptcy? A. Yes sir.

Q. And you were thus employed by Zemansky Brothers during the period of February 1st to the end of February, 1939? A. Yes.

Q. Do you recall on occasion during 1939 when Mr. Zemansky asked you to stay after your regular hours on that day and select certain pledges?

A. I do.

Q. On that occasion to which you have testified there [316] were present yourself, Mr. Sego, myself and Mr. Kleinman. Was Mr. Sol Zemansky there for a while that evening?

A. I don't think so.

Q. And you described your procedure in selecting these pledges by stating that you took five or six drawers of the larger sized pledges, meaning, in amount, of course; that is, you didn't mean the jewelry was big, you mean the amount loaned was large? A. The amount loaned was large.

Q. Yes; and those boxes were taken into another office? A. Yes sir.

Q. Now, in that office, Mr. Kravitz, where the jewelry was taken, that was the business office, was it not, of the firm or at least there were adding machines in there? A. Yes sir.

Q. A flat topped desk? A. Yes sir.

Q. Those boxes were put down, were they not, on this desk? A. Yes sir.

(Testimony of Leo Kravitz.)

Q. The procedure you followed was, or that we followed, should I say, that either you, myself or Mr. Sego would write down the numbers of those pledges as you called them off; that is, you would look at the first pledge and then give us the number; is that correct? [317]

A. I think it was the numbers and the amounts, if I am not mistaken.

Q. First you did give the numbers of the pledge on the pledge envelope, and also the amount for which the pledge was pawned? A. I think so.

Q. And those numbers were all written down on sheets of paper at that time, were they not?

A. I know you had some sheets there.

Q. Now, will you look over these sheets and see if you recognize them, just take them up and look over them, and see if you can find any of your own handwriting on them.

A. Right here is my handwriting.

Q. Where?

A. I think this is it right here, this one.

Q. Does the sight of your handwriting on that sheet of paper recall to your mind the fact that on that occasion you wrote down some of the numbers of the pledges and the amounts? A. Yes sir.

Q. As they were called off to you? A. Yes.

Mr. Laugharn: Do you want to introduce them?

Mr. Dienstag: I am going to.

Mr. Laugharn: You are just laying your foundation? [318]

(Testimony of Leo Kravitz.)

Mr. Dienstag: Yes.

Mr. Laugharn: Can we see that?

Mr. Dienstag: Surely.

The Witness: Mine is right there and I think Mr. Sego's is right there.

Q. By Mr. Dienstag: You recognize Mr. Sego's also? A. Yes.

Mr. Laugharn: Is this the work sheet that was made up, and this was transposed——

Mr. Dienstag: In the contract, so by comparing the original contract you will find the pledge numbers are the same.

Mr. Laugharn: This is embodied in the original contract.

Mr. Dienstag: Oh, yes, the numbers are.

Mr. Laugharn: What do you want this for, if you have the original?

Mr. Dienstag: Only to show how this transaction was handled at the office.

Mr. Laugharn: The pledge numbers are the same in there as in the contract.

Mr. Dienstag: You have my assurance they are.

Mr. Chotiner: As long as he has testified to the manner in which it was handled, it is not necessary to encumber the record by having the sheets of paper actually introduced. [319]

The Referee: I don't see how it is going to help us at all. Proceed.

Q. By Mr. Dienstag: Now, Mr. Kravitz, after you had selected these various pledges, they were

(Testimony of Leo Kravitz.)

added up on an adding machine, were they not, at that time?      A. Yes sir.

Q. You got the amounts that these items were pledged for?      A. Yes sir.

Q. And when we had selected the amount of pledges upon which the loans granted exceeded \$100,000, that was the point at which we stopped selecting pledges?      A. Yes sir.

Q. So that the amount of pledges contained in the last box were added up also?

A. What was the last question, please?

Q. When we totaled up, when the amount of pledges was totaled up in the last box, we found that the total amount selected up to that time was now in excess of \$100,000?      A. Yes sir.

Q. At that time we stopped selecting any old pledges?      A. Yes sir.

Q. Now, there was, was there not, a cardboard, a small white cardboard, placed in the receptacle in the front of those boxes?      A. Yes sir. [320]

Q. Marking the number of the pledge at one end of the box and a number at the other end of the box?      A. Yes sir.

Q. Then underneath those numbers, or above the numbers, the initial "K"?      A. Yes sir.

Q. And the first box was marked "K-1"?

A. Yes sir.

Q. The second box "K-2"?

A. I don't know anything about the 1 or 2, but I know there was a "K".



(Testimony of Leo Kravitz.)

Q. You remember the "K." There was then selected in the vault of the Provident Loan Association a section in which these boxes were placed, one below the other, all in the same section?

A. Yes sir.

Q. And you were instructed at that time, were you not, that that was the position in which those boxes should be kept? A. Yes sir.

Q. And thereafter those boxes were kept in that position? A. Yes sir.

Q. And except for the replacement of new pledges for pledges which had been redeemed, there was no change in the position of the boxes? [321]

A. No sir.

Q. Or in the manner of their keeping?

A. No sir.

Q. In carrying out these duties, you were following the instructions of your employer, Mr. Sol Zemansky, were you not? A. Yes sir.

Q. Now, Mr. Kravitz, do you know who took the pledge tickets, representing these pledges, out of the ordinary pledge boxes of the concern?

A. Abe Zemansky.

Q. Yes, and he started to do that the next morning, did he not, after the pledges had been selected?

A. I think so, yes.

Q. And his duty had been completed in three or four days? A. Yes sir.

Q. And after these pledge tickets were taken out of the general pledge boxes of the company, they were put into separate boxes, weren't they?

(Testimony of Leo Kravitz.)

A. Yes sir.

Q. And they were all bound together in separate loose leaf books? A. Yes sir.

Q. And across the edge of all of these books was put the initial "K"? [322] A. Yes sir.

Q. So that the "K" ran across the edge of the entire group of pledges, which formed a solid background? A. Yes sir.

Q. And all of the pledges so selected, whether at that time or at future times, were kept in separate books? A. Yes sir.

Q. Marked "K"? A. Yes sir.

Q. And they remained there at all times?

A. Yes sir.

Q. Until the day a payment was made?

A. Yes sir.

Mr. Dienstag: Now, I would like to have Exhibit 8. Here it is.

Q. Now, Mr. Kravitz, you have testified that at one time this pawn ticket differed from the one in evidence, in that this extra stub at the end was not attached to the ticket? A. Yes sir.

Q. So that prior to that time, when making a pledge, you would give the customer the large ticket? A. Yes sir.

Q. You would retain the stub in your file?

A. Yes sir.

Q. The customer would sign the stub, is that correct? [323] A. Yes sir.

(Testimony of Leo Kravitz.)

Q. When the customer returned with the large stub, then the customer would sign the large stub in his possession?      A. Yes sir.

Q. Upon your comparing the stub which was in your possession, you concluded, as long as he had possession and the signature was the same, the jewelry belonged to him?      A. Yes sir.

Q. You would return it to him upon payment of the principal and the interest?      A. Yes sir.

Q. This stub then, or these stubs, which corresponded to the pledges which had been selected for the Kleinman group, were taken out of the record book where they were at that time and put in separate books?      A. Yes sir.

Q. Those were the ones that had the customer's signature upon them?      A. Yes sir.

Q. So when a customer came into the Provident Loan Association, the only way you could find out whether the signature was the same and whether these numbers corresponded, was to go to this stub?

A. Yes sir. [324]

Q. You had no other stub which you could go to?

A. No sir.

Q. Now, this form of ticket, Mr. Kravitz, was not printed, was it, until sometime after the security was given on the Kleinman loan?

A. I really don't know when it was.

Q. You don't remember when this was printed?

A. No, I don't know.

(Testimony of Leo Kravitz.)

Q. So that the only way you could tell is by taking it to the printer, is that it?

A. That is right.

Q. Now, Mr. Kravitz, you have stated that when the loan was redeemed, you would put that particular ticket, the redeemed ticket, upon a spindle?

A. Yes sir.

Q. And by that you mean—I am sorry, your Honor, perhaps I should have kept this a little longer—you would take the original ticket, the large ticket which the customer had, and put it on the spindle?      A. Yes sir.

Q. And before you did so, you would mark on this large ticket which the customer had had in his possession, some mark that would identify that as a Kleinman pledge ticket?      A. Yes sir.

Q. What did you do at the end of the day with regard [325] to those tickets that were on the spindle?

A. At the end of the day, I would go over every one of the tickets and look for all the Kleinman, Bob Gans and Simon tickets, and just segregate them.

Q. But if there were not any Simon tickets or Gans tickets, you would look for the Kleinman tickets, is that correct?      A. Yes sir.

Q. And you would segregate them?

A. Yes sir.

Q. Would you note the numbers of those in any way?      A. Yes sir.



(Testimony of Leo Kravitz.)

Q. Where would you put the numbers?

A. I would put them on little tabs, the numbers and the amounts.

Q. What would you do with those tabs?

A. The next morning I would give them to Mr. Kleinman.

Q. When these were made up, you would give them to Mr. Kleinman?      A. Yes sir.

Q. So you gave him a record of——

A. What was redeemed.

Q. On the day before?      A. Yes.

Q. With regard to the stub in this book, which was redeemed, which remained in the book, what would you do [326] with regard to that?

A. That was left in the book.

Q. Would you mark that in any way?

A. They were marked redeemed.

Q. When you handed to Mr. Kleinman this little tab with the numbers of the pledges which had been redeemed, would you give those numbers to anybody else?

A. No sir, I would give it to Mr. Kleinman; that's as far as it would go.

Q. You didn't give it to your employers?

A. I think Mr. Kleinman would give it to them.

Q. Mr. Kleinman would give it to your employers?      A. Yes.

Q. And do you know whether a record was kept of these Kleinman pledge books and any other pledge books in the Provident Loan Association?

(Testimony of Leo Kravitz.)

A. I think Abe Zemansky would take care of that.

Q. Did he have such a record that you know of?

A. I don't know.

Q. Well, do you recall whether there was a book with these numbers in the book, or don't you?

A. I don't know.

Q. When you got the money, or when you got the money when one of these pledges was redeemed, you testified you put that in the cash drawer?

A. Yes sir. [327]

Q. Is that correct?                      A. Yes sir.

Q. And then you would use that money in taking in other pledges, that is, you would loan it to customers, wouldn't you?                      A. Yes sir.

Q. You did the same thing with all the money that came in, didn't you?                      A. Yes sir.

Q. In other words, if money came in from a pledge that belonged to the company, and which had not been assigned to anyone, you would use that money for new pledges, any money that came in would be used for new pledges?

A. Not all the time, no.

Q. Well, what would you use the money for?

A. The remaining money I used to have to lay aside.

Q. But eventually that money was used, was it not?                      A. Eventually, sometimes.

Q. Now, when you loaned this money out on new pledges, you would not mark the new pledges,

(Testimony of Leo Kravitz.)

the new pledge tickets, would you, in any form other than your usual description of the jewelry and numbers and so forth?      A. That is all.

Q. So those new pledge tickets, as they came in, were not marked "Company," or "Simon," or "Kleinman," or "Gans"?      A. No sir. [328]

Q. And you would have them in consecutive order, would you not, in all of those books?

A. Yes sir.

Q. So if you were running in the 2300 series, the numbers would be 2301, 2302, and so forth?

A. Whatever the numbers would be.

Q. Now, at frequent intervals every other day or every three days, you were delegated to the duty, weren't you, of selecting additional pledges to replace the pledges which had been redeemed out of the Kleinman boxes?      A. Yes sir.

Q. And that was a continuous duty, was it?

A. Yes sir.

Q. Now, who took the pledge tickets out of the new tickets which had come in, and placed them in the Kleinman book?      A. Abe Zemansky.

Q. So that was his duty, was it not?

A. Yes sir.

Q. And did you ever see him do it?

A. Yes sir.

Q. And was that just frequently when he picked out the pledges themselves?      A. Just about.

Q. So as you picked out the pledges, Mr. Abe Zemansky would pick out the tickets? [329]

(Testimony of Leo Kravitz.)

A. Yes sir.

Q. Now, there was some difficulty, Mr. Kravitz, with regard to the second stub, that is, after this form was completed, when you got through making it out—I assume you had a piece of carbon paper between the first and second stubs?

A. Yes sir.

Q. One of these stubs was put into a book?

A. Yes sir, one of the stubs was put in a book.

Q. The other stub was kept loose and you say you had it in a drawer?           A. Yes sir.

Q. and at frequent intervals, isn't it a fact that you would pick up these loose stubs which were left there and make them into a package?

A. Yes sir.

Q. They were not put into a book, or were they?

A. Well, the ones put into a package would be unredeemed; I mean, would be redeemed.

Q. Before we go to the redeemed pledges, Mr. Kravitz, let's bear in mind this extra duplicate which we have never used before, until this form was used; that extra duplicate was kept separate from the others, wasn't it?

A. It has been so long ago I can't just get that straightened out. One of the Zemanskys can straighten it out. It will all come to my mind, but I just can't get it [330] straight.

Mr. Dienstag: I think perhaps I can get the information I want in another way.

Q. You said eventually these extra stubs were kept behind the wall case?



(Testimony of Leo Kravitz.)

A. I am pretty sure they were.

(Discussion between Court and counsel.)

Q. By Mr. Dienstag: By the wall case, you mean the jewelry case where the jewelry was kept?

A. Yes sir.

Q. Let's picture this for the Court. You walked into the Provident Loan Association, directly in front of you as you enter the premises there are a series of jewelry cases, which form an oblong?

A. Yes sir.

Q. On the outside of this oblong is a wooden case running up to a height of approximately two feet and above that a glass case? A. Yes sir.

Q. Within the glass case, which follows the contour of the room, and to form a large oblong, is contained jewelry, or it contains jewelry?

A. Yes sir.

Q. And that jewelry ordinarily was jewelry which was sold at retail? A. Yes sir. [331]

Q. Now, behind these showcases and within this oblong was jewelry which ran to the ceiling and also cases and drawers? And a sitting room?

A. Yes sir.

Q. Now, in this room were kept certain stubs, is that correct, some redeemed stubs; you had no more room for them, so you put them there?

A. Yes sir.

Q. They were not going to be used any more?

A. No sir.

(Testimony of Leo Kravitz.)

Q. Is that what you meant when you said you thought those duplicates were kept in that same place?      A. I think so.

Mr. Dienstag: Well, I won't pursue that any further.

Mr. Laugharn: To summarize that——

Mr. Dienstag: I think the witness has summarized it.

Mr. Laugharn: Ordinarily the book with the duplicates had no use whatever in the system; they were just put here some place?

Mr. Dienstag: Frankly, I don't know at this time.

The Referee: Overruled; let's go on.

Mr. Dienstag: May I ask another question?

Q. Was this room being actually used, which had the duplicates, did you ever use this room at all?

A. I don't think so.

Q. As a matter of fact, this room was never actually [332] put in operation at the Provident, was it?      A. I don't think so.

Q. I think that you have stated, Mr. Kravitz, when these pledges were originally selected for Mr. Kleinman, I am taking you back to that time, the purpose in pulling out certain of these drawers was because the amounts loaned were large?

A. That is right, yes sir.

Q. Now, Mr. Kravitz, you have been questioned about the Simon transaction, so you know what I am talking about when I say Simon transaction?

(Testimony of Leo Kravitz.)

A. Yes sir.

Q. You were instructed at one time subsequent to the selection of those pledges, were you not, to take certain of the pledges out of the Kleinman drawers and list the numbers? A. Yes sir.

Q. At the same time you were given instructions, were you not to select other pledges for Mr. Kleinman? A. Yes sir.

Q. So that as soon as you selected the pledges and got the numbers out of a particular drawer in the Kleinman box, you started selecting other pledges to replace those? A. Yes sir.

Q. When you had finished selecting those new pledges, you placed those, having obtained the numbers, you placed [333] those in the Kleinman drawer, did you not? A. Yes sir.

Q. Now, if I am not mistaken, Mr. Kravitz, that was done, this selecting was done during the day before the evening that Mr. Ross, the attorney from Judge Pacht's office, and Mr. Simon and Mr. Lyman came over to check their contract numbers as against the pledges which you had selected for them out of the Kleinman box?

A. I don't quite get that.

Q. I will ask it again; it was rather long. The morning of the day on which you were told to select pledges out of the Kleinman drawers for the Simon, having selected those out of the Kleinman drawers, which you did by picking out one drawer, you then began to select new pledges for Mr. Kleinman?

(Testimony of Leo Kravitz.)

Mr. Chotiner: We object to that as assuming facts not in evidence, that he was told on the morning of the day.

Mr. Dienstag: It is cross-examination.

The Referee: Overruled.

A. After the Simon transaction was all over, then I started to collect the pledges for Mr. Kleinman.

Q. By Mr. Dienstag: You mean by the Simon transaction being over, that you had selected the pledges for the Simons?

A. After the Simon transaction was over, then I began to collect pledges for Mr. Kleinman. [334]

Q. You replaced them with the exact amount of other pledges and tickets?      A. Yes sir.

Q. And in that case, as in the previous case, Mr. Abe Zemansky pulled those tickets out of the regular books, didn't he?      A. Yes sir.

Q. And those were kept separate?

A. Yes sir.

Q. Handled just as the other transaction had been handled?      A. Yes sir.

Q. Do you remember at this time whether the amount of pledges selected for Mr. Kleinman to replace those which were taken for the Simons, were equal in number, or greater than the amount which had been taken?

A. Do I remember the amount?

Q. Not the exact amount, but do you recall that the pledges equaled the pledges which had been taken, or more than equaled them?



(Testimony of Leo Kravitz.)

A. I think it was a little better than \$30,000, or around that.

Q. Your recollection is that it was about \$30,000?

A. Or around there. [335]

Mr. Dienstag: If your Honor please, by stipulation the following statement is made, that the total amount for which the articles were pledged, which were selected as security for the February 24th contract, was \$107,140, so that is the security, the principal amount, for which the articles were pledged. This did not include any interest due on the pledges.

Mr. Laugharn: In other words, that is the total of the pledges without interest, as set forth in the Exhibit A attached to the contract of February 24th.

Mr. Dienstag: That is correct.

Q. Now, Mr. Kravitz, subsequent to the time that you selected these original pledges in the sum of about \$107,000, there arose occasions, did there not, when there was insufficient money in the cash drawer in order to make loans? A. Yes sir.

Q. And at those times also, Mr. Kleinman advanced money to you with which to make loans? [336]

A. Yes sir.

Q. Now, do you of your own knowledge, know whether any of those sums were repaid or not?

A. I don't know.

Q. Were there many of such amounts advanced?

A. Off and on, yes sir.

Q. So that the total amount so advanced would be rather substantial, would it not?

(Testimony of Leo Kravitz.)

A. I think they would, yes sir.

Q. I mean, it would amount to several thousand dollars altogether?

A. Every bit of that, yes sir.

Q. By Mr. Dienstag: You have heard of Mr. Gans?

A. Oh, yes, Mr. Gans, yes. [337]

Q. Robert Gans? A. Yes sir.

Q. Did you take out of the Kleinman pledges, pledges for the Gans transaction?

A. I think I did.

Q. Yes. And you were instructed to do that by your employer, of course?

A. Yes sir.

Q. Yes. At that time, you also selected other pledges, did you not, to replace in Mr. Kleinman's box, the ones which you had taken out for the Gans transaction?

A. Yes sir.

Q. And those were all selected, that is, the replacement pledges were selected about that time, as you remember?

A. Yes sir.

Q. And those tickets were taken out of the pledge books by whom, Mr. Kravitz?

A. Mr. Abe Zemansky.

Q. So all through this period, Mr. Kravitz, you were the one who actually handled the pledges themselves, that is, the physical pledges so involved, you were the one who carried forth the transaction with regard to taking them out of the boxes or replacing them with others?

A. Yes sir.

Q. And Mr. Abe Zemansky, one of your employers, was the one who took these pledge tickets out of the books, and [338] did he put them in the

(Testimony of Leo Kravitz.)

other Kleinman books himself or did you put them in?      A. No, he put them in.

Q. He put them in there. And that is where you found them, didn't you?      A. Yes sir.

Q. So after you had selected new pledges to replace pledges which you picked out in these two transactions, the Simon and the Gans transactions, you found the tickets for those pledges which you had selected to be put in the Kleinman box in the Kleinman books?      A. Yes sir.

Q. That is where you compared the signatures?

A. Yes sir.

Q. And that is the way you did it until the time that the place was closed?      A. Yes sir. [339]

Q. Well, after you selected the Gans pledges,—(withdraw that) After you had selected the pledges for Mr. Kleinman's box to replace the Gans pledges, did you put those into a cardboard box at first?  
[340]

A. I don't think so.

Q. You don't think so. Well, what did you do with them, do you remember?

A. I don't remember.

Q. So at this time you don't recall just how you did this?      A. No, I don't.

Q. In other words, you might have done it one way or the other?      A. That is right.

Q. With this reservation, that you have testified that about the time you selected the pledges out of the Kleinman box, you also selected new pledges to replace them?      A. Yes sir. [341]



(Testimony of Leo Kravitz.)

Q. Mr. Kravitz, earlier today in your examination, or cross-examination, you stated that you had put these redeemed tickets, the large portion of the pledge that the customer had, on a spindle, and that at the end of the day you would copy the numbers down, which referred to the Kleinman pledges, which were redeemed, and then you would hand that slip to Mr. Kleinman.

A. Yes sir.

Q. Now, will you look at this piece of paper, dated February 21, 1939, that has numbers and figures opposite those numbers; is that your handwriting?

A. Not that one, the date is.

Q. The date is your handwriting?

A. Yes.

Q. And this one dated February 22nd?

A. Yes sir. [342]

Q. Is that all your handwriting?

A. All in my handwriting.

Q. And the one dated February 23rd?

A. That is in my handwriting.

Q. February 24th.

A. All my handwriting.

Q. February 25th.

A. All my handwriting.

Q. February 27th.

A. Not mine.

Q. February 28th.

A. Not mine.

Q. February 29th.

A. That is not mine.

Q. Or, rather, March 1st, as there was no February 29th. How about this one?

A. No.



(Testimony of Leo Kravitz.)

Q. Will you look through these as I put them down and select any that is yours?

A. Yes sir.

Q. This is dated March 7th?

A. That is mine.

Q. These are the tickets then to which you have reference, is that correct?

A. Yes sir.

Q. Let us take this one, for example, dated February [343] 22nd. On that date, you made a note on this slip of paper, "February 22, 1939, No. 43175, \$70"; that is correct?

A. Yes sir.

Q. And that was the redemption on that date?

A. Yes sir.

Q. That was the only redemption?

A. The only one I made.

Q. Then you gave that ticket to Mr. Kleinman, as a record of the pledge which had been redeemed and the amount of the pledge?

A. Yes sir.

Q. And this was, of course, the procedure that you followed every day from the day that you had selected the pledges until the time that the Provident Loan Association was closed?

A. Yes sir.

Mr. Chotiner: We would like to have that marked for identification, that one and the rest of them also.

Mr. Dienstag: All right. I will take these pledge tickets which I have referred to, being six in number, and dated February 21st, February 22nd, Feb-

(Testimony of Leo Kravitz.)

ruary 23rd, February 24th, February 25th, and that isolated one here of March 7th, and offer them for identification as Kleinman's Exhibit A.

The Referee: That will be Kleinman's Exhibit A for Identification. [344]

Mr. Dienstag: If there is no objection, your Honor, I will offer these in evidence rather than for identification.

The Referee: Is there objection?

Mr. Chotiner: At least, as to February 21st, the witness said it was not in his handwriting.

The Referee: All right ask the witness again whether all of these are in his handwriting.

The Witness: All of these here are in my handwriting.

The Referee: The ones you are holding in your hand are in your handwriting. Very well.

The Witness: The date on this one is in my handwriting. (Referring to the slip dated February 21st.)

Mr. Chotiner: But the rest is not in your handwriting.

The Witness: No.

Q. (By Mr. Dienstag): Do you know whose handwriting that is?

A. It looks like Abe Zemansky's.

Q. You are familiar with Abe Zemansky's handwriting? A. Yes sir.

Q. Abe Zemansky was one of your employers?

A. Yes sir.

(Testimony of Leo Kravitz.)

Mr. Dienstag: We offer them all at this time.

The Referee: Is there objection? All right; they will be Kleinman's Exhibit 3 in evidence.

---

### KLEINMAN'S EXHIBIT No. 3

Feb. 21, '39

33401.....	75.00✓
35771.....	75.00✓
45148.....	85.00✓
45884.....	50.00✓
47381.....	175.00✓
47415.....	50.00

Feb. 22, '39

43175.....	✓\$ 70.00
------------	-----------

Feb. 23, 1939

42763.....	50.00✓
46130.....	100.00✓
46129.....	50.00✓
40830.....	80.00✓
39059.....	200.00✓
44208.....	150.00✓
44204.....	200.00✓
	(S45029✓)
45775.....	100.00✓

Feb. 24, 1939

46722.....	✓ 150.00
40404.....	✓ 80.00
40071.....	✓ 50.00
47508.....	✓ 70.00
25201.....	✓ 50.00
41233.....	✓ 50.00
39945.....	✓ 150.00
42690.....	✓ 100.00
29925.....	✓ 150.00

(Testimony of Leo Kravitz.)

Feb. 25, '39

3733\*..... X 175.00✓

---

[\*Illegible; defaced in original exhibit.]

40541.....✓ 160.00

41154.....✓ 50.00

42055.....✓ 50.00

44298.....✓ 85.00

46099.....✓ 50.00

46852.....✓ 150.00

March 7, 1939

45199.....✓O 200.00

48000.....✓N 30.00

42387.....✓O 75.00

48078.....✓N 40.00

47894.....✓O 50.00

[Endorsed]: Filed Aug. 23, 1940.

---

Mr. Dienstag: Your witness, counsel [345]

The Referee: Do you want these?

Mr. Chotiner: If I may, your Honor.

Redirect Examination

By Mr. Chotiner:

Q. Directing your attention to Kleinman's Exhibit No. 3, the one dated February 21, 1939, when you put that date on there, was the writing that appears above the date already on the slip of paper?

A. Yes sir.

Q. Do you have an independent recollection of that piece of paper?



(Testimony of Leo Kravitz.)

A. No, I haven't.

Q. On what do you base it, that you put the date on there after the other writing was already on the piece of paper?

A. Well, I wouldn't put it on there here, down here; if I was to do any writing, I would put the date here, up here.

Q. Do you know why the date had not been put on there at the time the slip was given to you?

A. I probably told Mr. Abe Zemansky to give me a record of all numbers. I probably got busy and he took a record of the numbers and I put the date on it. That happened that way.

Q. Can you tell us what the insignia means on this [346] slip of paper, dated February 21, 1939, after the \$75?

A. That means they were checked off of Kleinman's books.

Q. Where you find one where that same insignia does not appear, what does that indicate?

A. I guess that must have been something to look up on Kleinman's books, we left it open.

Q. Wherever the insignia indicated by an X with the line joining the two diagonal lines on the left-hand side appears, does that mean that that is one that was checked against the Kleinman books?

A. Yes sir.

Q. February 22nd was Washington's birthday; was the Provident Loan Association open that day for business?

(Testimony of Leo Kravitz.)

A. I am pretty sure it was.

The Referee: February 22, 1939, was on a Wednesday.

A. We were open on that day.

Q. (By Mr. Chotiner): Now, whenever you would make a redemption of a pledge that had been set aside for Mr. Kleinman, was there another pledge of approximately the same amount in the vault that had not been set aside for any other creditor? A. There were.

Q. Now, whenever you would make a redemption of a pledge that had been set aside for the Simons, what did you do with the money? [347]

Mr. Wolver: That is objected to as being incompetent, irrelevant, and immaterial, not binding on this claimant whatsoever.

Mr. Chotiner: They went into it on cross-examination.

The Referee: Overruled.

A. We put it in Mr. Simon's box.

Q. (By Mr. Chotiner): Was that money put in the regular cash drawer from which you made loans? A. No sir.

Q. Now, directing your attention to Trustee's Exhibit 8, which is the form of pledge ticket, I believe you testified to on cross-examination, that that form was not used at the Provident; did you mean the entire form was not used or a portion of it was not used?

A. A portion of it was not used.

(Testimony of Leo Kravitz.)

Q. And which portion were you referring to when you so testified on cross-examination.

A. The duplicate.

Q. The duplicate stub, is that correct?

A. Yes sir.

Q. Now, at the time you set aside security for the Simon account,— Withdraw that. I will now direct your attention to the time when you set aside the security for the Simon account, that was the occasion when you took some of the Kleinman pledges, and used them to make up the Simon security; is that correct? [348]

A. Yes sir.

Q. How long after you did that was it that you set aside additional pledges for the Kleinman account to make up the pledges that had been taken from him?

A. As soon as I finished the Simon transaction.

Q. How long after was that?

A. It might have been that same day.

Q. Do you remember whether it was in the daytime or in the nighttime that you set aside the security for the Simon account?

A. We finished up the next day. At night we started and finished up the next morning.

Q. That finished up the Simon?

A. The Simon account, the next morning.

Q. How long after that was it then that you put back or, rather, put the security on Kleinman's side in the vault after you finished the Simon matter?

A. That same day.

(Testimony of Leo Kravitz.)

Q. Do you have an independent recollection of doing that?      A. Yes sir.

Q. Just as soon as you finished Simon, did you start immediately then to set aside some pledges for Kleinman?

A. I am positive it was.

Q. Then why did you take some from Kleinman's pledges to give to Simon in the first instance? [349]

A. Well, for the Simon account, we gave them old pledges, which would not be redeemed so fast; the money would not come in so fast with the Simon account. They were old pledges.

Q. In other words, you took old pledges from the Kleinman security to give to Mr. Simon; is that correct?      A. Yes sir.

Q. Was that the only reason that you know of as to why that was done?

A. The only reason, yes sir.

Q. Were there any other reasons?

A. It was easier to come through with the transaction with the Simon.

Q. Well, Mr. Kravitz, will you explain to us then what was easier about taking drawers of pledges that had been set aside for Kleinman instead of going to another portion of the vault and taking pledges that had not been set aside for anyone?

A. It would take us four or five hours.

Q. They were all in the same place, weren't they?      A. No sir.



(Testimony of Leo Kravitz.)

Q. You only had one vault, isn't that correct?

A. Yes sir, but I had to go through maybe 25 or 30 drawers to get large loans out of there.

Q. Where were the large loans?

A. Segregated all over the vault. [350]

The Referee: I think I would like to ask the witness what his understanding of the term "large loan" is.

A. Anything from \$50 up.

Q. (By Mr. Chotiner): Directing your attention to the time when the Gans security was set aside, how long after that was it that you replaced security that had been taken from the Kleinman drawers?

A. As soon as we finished up the transaction.

Q. Mr. Kravitz, do you have an independent recollection of those occasions?

Mr. Dienstag: I don't understand this "independent recollection," after every statement the witness makes. He said that he did it at that time.

The Referee: It is overruled. Proceed.

A. The only thing I know, as soon as I finished Mr. Gans' transaction, I started on Mr. Kleinman's transaction.

Q. (By Mr. Chotiner): At the time you set aside pledges for Mr. Gans, were there other pledges in the vault which had not been set aside for any creditor?      A. No sir.

Q. You mean then that at the time the Gans pledges were set aside for him, there were no

(Testimony of Leo Kravitz.)

pledges in the vault that had not been assigned to anybody else? [351]

A. Just Kleinman and Simon.

Q. Then where did you get the pledges to replace the ones from the Kleinman account that you had set aside for Gans?

A. There were a lot of \$20 loans, \$15 loans, \$10 loans, and \$25 loans, that we didn't want to put in the Gans transaction.

Q. Then there were other pledges in the vault at that time that had not been assigned to any other creditor; is that correct?

A. Yes sir.

Q. Well, were all of the pledges at the time of the Gans transaction— Withdraw that. At the time you set aside the security for the Gans account, were all of the pledges in the vault set aside for some creditor with the exception of the small ones, of about \$10 or \$15?

A. I don't quite understand that.

Q. I will try to do a little better. At the time you set aside the security for the Gans account, were all of the pledges that were in the vault at the Provident Loan Association already set aside for some other creditor with the exception of small loans?

A. No sir.

Q. Then there were some large loans in the vault at that time that had not been set aside for other creditors; is that correct? [352]

A. No, there were a lot of small loans that were not set aside for creditors.

(Testimony of Leo Kravitz.)

Q. In other words, there were a lot of small loans in the vault that had not been set aside for other creditors, is that correct?

A. That is right.

Q. Now, during the times that you would talk with Mr. Kleinman at the Provident, did you ever talk to him about the Tango business in which the Zemanskys were interested?

A. Off and on, yes sir.

Q. What was it that you used to say to Mr. Kleinman and Mr. Kleinman used to say to you about the Tango business?

A. Used to talk to him about El Cerritos, if they ever got going, they would make a lot of money there.

Q. What did Mr. Kleinman say about it?

A. "I am glad to hear it."

Q. Was anything else said by you or Mr. Kleinman about the Tango business operating?

A. He knew it was a very good business when they got going. [353]

At the time you selected the Gans pledges the pledges to replace the Gans pledges, taken out of Mr. Kleinman's box, there were about 20 or 30 drawers of pledges that were assigned to no one, weren't there? A. Yes sir.

Q. You had already been through a good many of those boxes to get large loans?

A. Yes sir.

(Testimony of Leo Kravitz.)

Q. Especially when you picked up \$100,000 or more for the Kleinman transaction?

A. Yes sir.

Q. Now, in these 25 or 30 boxes full of pledges, there might have been a large loan here and there, is that correct?      A. That is right.

Q. But in order to select those, you would have had to go through 25 or 30 boxes, wouldn't you?

A. Yes sir. [354]

Q. And there are a lot of those pledges in one box, aren't there?

A. Yes sir.

Q. Possible a couple hundred in a box?

A. 200 or more.

Q. 200 or more. Is that the reason why you first picked the numbers out for Gans, then went through a box to replace them for Kleinman?

A. Yes sir. [355]

Q. And the Tango business was mentioned?

A. Tango.

Q. Or the other amusement enterprises of the Zemansky Brothers. It was well known that they were in the amusement business, was it not?

A. Yes sir.

Q. Especially among the employees?

A. Yes sir.

Q. And was the general opinion which was expressed to you by the other employees and yourself to them that that was a very profitable business when it was running?      A. Yes sir.



(Testimony of Leo Kravitz.)

Q. So that the discussions which you had with Sam Kleinman in regard to that were the same that you had with the other employees? A. Yes.

Redirect Examination

By Mr. Chotiner: [356]

Q. Directing your attention to the first time that you set aside pledges for Mr. Kleinman, and then you would go ahead and make redemptions for customers, how often would it be that you would accumulate other pledges and put them over into the Kleinman security account?

A. Well, I used to have them ready for Mr. Kleinman, if I got a bunch of them set aside, they would amount to three or four thousand dollars; I would give them to Mr. Abe Zemansky and Abe Zemansky brought them to me and we would give them to Sam, three or four thousand dollars worth of pledges.

Q. That would happen to be every two, three or four days?

A. A little longer than that sometimes. [357]

ROBERT SEGO

called as a witness on behalf of the Trustee, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Chotiner:

Q. Were you an employee of the Zemansky Brothers? A. I was.

Q. And how long were you employed by them?

A. Well, I say around 32 years.

Q. And that was right up to the bitter end, is that right? A. That is right.

Q. By that, I mean up to the time that they filed bankruptcy proceedings?

A. That is right.

Q. During that period of time, and particularly directing your attention to the last few years what were your duties?

A. As a loan clerk and salesman.

Q. And where did you work in the last few years?

A. The last year and a half I worked at the Provident Loan Association.

Q. Your duties as loan clerk, I assume, were to make loans to customers when they would come in?

A. That is correct. [358]

Q. Did you ever handle any redemption of loans? A. I did.

Q. Now, then, did you have access to the vault?

A. I did.

(Testimony of Robert Sego.)

Q. Did you ever open up the vault in the morning?

A. I did a few times, not very many times.

Q. Who used to open up the vault?

A. Mr. Kravitz.

Q. Mr. Kravitz is your brother-in-law?

A. That is correct.

Q. Directing your attention to the time when the security was set aside for Mr. Kleinman, do you remember that occasion generally?

A. I do.

Q. At that time, whenever you would make a redemption of a pledge that had been set aside for Mr. Kleinman, what did you do with the money?

A. Put it in the cash drawer.

Q. And what did you do with the money after it went in the cash drawer?

A. Used it for loans again, when they came in.

Q. Did you set aside that money in a separate place in the cash drawer from money from other pledges?

A. No sir.

Q. Was that the same place in which you put the money that you received from redemptions on other loans? [359]

A. That is right.

Q. Did you ever see Mr. Kleinman— Withdraw that. Did Mr. Kleinman ever make redemptions of pledges that had been set aside for him?

A. He did.

Q. What did he do with that money?

(Testimony of Robert Sego.)

A. He put it in the cash drawer, too.

Q. Was that money used again for the purpose of making new loans?

A. That is right.

Q. Who would go into the vault to get a pledge, where it was a pledge that had been set aside for Mr. Kleinman?

A. Well, anybody that would be waiting on the customer at the time.

Q. In other words, any loan clerk who was waiting on a customer would go to the drawer and take the pledge?

A. That is right.

Q. Did you ever see Mr. Kleinman look in the cash drawer?

A. I did.

Q. And what would be the occasion of his looking in the cash drawer?

A. Oh, he looked in the cash drawer many times. If he would look in and didn't find any money, he dropped his hands where the money was supposed to be and just say, "Nicht gut." [360]

Q. What does "Nicht gut" mean?

A. No good.

Q. Did he used to do that before the security had been set aside for him?

A. Well, any time that there wasn't very much money in there.

Q. Were those occasions before the time the security was set aside for him?

A. Before and after.



(Testimony of Robert Sego.)

Q. Did you ever have any conversation with Mr. Kleinman or talk with him about there not being money in the cash drawer?

A. There were occasions, a few occasions.

Q. On the occasions that he did talk to you, however, what did he say, if anything.

A. Well, he would say, "How long is this going to keep on?"

Q. What did you say, if anything?

A. I said, "I don't know."

Q. What did he say, if anything, after that?

A. He didn't say very much. He would walk away, put his hand behind his back, or behind his ear, and scratch the back of his head.

Q. During what period of time was it when you were up at the Provident that there appeared to be a lack of cash on more occasions than previously? [361]

A. During what period of time? Let's see. I won't say exactly, but the time when I went up there, there appeared to be plenty of money. Later on, it seemed like it dropped to where there wasn't much money.

Q. When it started to drop down to the point where there wasn't much money, did you ever have an occasion when a customer would come in to borrow money, and you wouldn't have sufficient money to make the loan?

A. Yes, but I made the loan. I would inquire to see if I could get the money, either through Leo or Dave Zemansky.

(Testimony of Robert Sego.)

Q. Who did you ask for the money?

A. I asked Leo whether he could get it, or Dave Zemansky at the 558 store.

Q. Were there occasions after speaking to Leo Kravitz or calling Dave Zemansky, that you still did not get sufficient money to make a loan?

A. There would be.

Q. Was that on very many occasions?

A. Toward the last, yes sir.

Q. Did that occur prior to the time that security was set aside for Mr. Kleinman?

A. It was a few times, not very often. [362]

### Cross Examination

By Mr. Dienstag:

Q. I am quite interested in this habit of Mr. Kleinman's of putting his hand on the back of his head. Did you say he rubbed or scratched?

\* \* \* \* \*

Q. During all that period, let us say, when he started doing business with the Zemanskys in 1935, I presume you are referring to, when he came to the Provident Loan Association? [363]

A. No, when he came to the Main Street Store, 517.

Q. You had known him over there?

A. Yes sir.

Q. At that time, did he have this same habit of rubbing the back of his head with his hand and walking up and down?

(Testimony of Robert Sego.)

A. Well, not in the store at that time, because he never came in with his hat off.

Q. Where was it you first noticed this habit?

A. I noticed it at the Provident.

Q. At the Provident? A. Yes.

Q. When you first went there?

A. Yes.

Q. He was accustomed to doing that. You worked there about a year and a half?

A. Maybe a little bit longer, but approximately.

Q. In any event, a year and a half before the time the Provident closed up, there was Mr. Kleinman rubbing the back of his head and walking up and down?

A. Walking up and down, or walking in a circle.

Q. Oh, he was walking in a circle, too?

A. Yes.

Q. At that time, when you first went there, Mr. Sego, and he was walking up and down or in a circle, and rubbing the back of his head, there was plenty of money [364] in the cash drawer?

A. When I first came up there?

Q. Yes. A. Yes.

Q. That is what you just said. There was plenty of money in the cash drawer, there was Mr. Kleinman walking up and down all around, and rubbing the back of his head. The answer was yes?

A. Yes. [365]

(Testimony of Robert Sego.)

Redirect Examination

By Mr. Chotiner: [366]

Q. Did you notice whether there was any change in his manner after he got the security?

A. After he got the security?

Q. Yes.

A. Well, I don't know whether there was much change in him, Mr. Chotiner.

Q. Was there a change that was noticeable to you in any way?

A. Well, he might have been a little more calm, but that's all. [367]

---

DAVE ZEMANSKY,

called as a witness on behalf of the Trustee, having been first duly sworn, testified as follows:

The Referee: Your name is Mr. Dave Zemansky?

The Witness: David Zemansky.

Direct Examination

By Mr. Chotiner: [368]

Q. Now, bearing in mind the amount of interest that you paid during the year, are you able to tell us approximately what the total amount of principal there was owing by Zemansky Brothers?



(Testimony of Dave Zemansky.)

A. I never did run it off. During every month there was some money coming in and some money to go. Sometimes we paid, sometimes we received money.

Q. Within a couple hundred thousand dollars, can you tell us approximately how much the firm owed? A. No.

Mr. Chotiner: Q. You saw the schedules that were filed by you and your brothers in the bankruptcy proceedings, didn't you?

A. Yes sir.

Q. And at the time you saw those schedules, you signed them, isn't that correct?

A. Yes sir.

Q. And at that time you found out, or at least you [370] knew, that Zemansky Brothers owed approximately over one million dollars, isn't that right?

A. Yes sir, at that time.

Q. Was there any substantial change in the amount of money that was owing by Zemansky Brothers within a period of one year prior to the time you filed the petition?

A. I wouldn't say any large amount.

Q. It didn't vary, in any event, more than \$200,000, did it?

Mr. Dienstag: Objected to as leading.

The Referee: Sustained.

Mr. Chotiner: Q. How much did it vary during that year, do you know?

(Testimony of Dave Zemansky.)

A. I couldn't say for sure.

Q. Can you give us an estimate of how much it varied? A. I don't know, no.

Q. Well, did it vary more than \$200,000?

Mr. Wolver: That is objected to as calling for the conclusion of the witness.

The Referee: Overruled. The witness apparently knows but is not answering. Perhaps some question will refresh his recollection. Overruled.

A. Did you say \$200,000, I don't know for sure, but I would presume it would not be that much.

Mr. Chotiner: Q. Did you see the schedule of the assets of the Zemansky Brothers at the time the petition [371] was filed?

A. Yes sir.

Q. And they were true and correct?

A. No. At the time the petition was filed?

Q. At the time the schedules were filed?

A. They had taken stock and one thing and another.

Q. They were true and correct to the best of your knowledge? A. Yes sir.

Q. You signed that schedule, isn't that true? Did you sign that schedule of assets?

A. No, I don't remember whether I did or not. I don't believe I did.

Q. At any rate, you saw the schedule?

A. The Receiver took charge of the stock and everything else, all there was.

(Testimony of Dave Zemansky.)

Q. Mr. Zemansky, in this proceeding, did you ever see the schedule of assets that was owned by Zemansky Brothers?

A. Yes, sir, later on, in the inventory.

Q. Was there any substantial difference between the total of those assets at the time you saw them and within a year's time prior to that?

A. As I say, I don't think there could be very much difference in the last year.

Q. When you say there couldn't have been much difference in the last year, could it have depreciated more [372] than a couple of hundred thousand dollars?

Mr. Miller: That is objected to as leading.

The Referee: Overruled.

A. Not more than that.

Mr. Chotiner: Q. Not more than that. At the time the petition was filed under Chapter 11 of the Bankruptcy Act, did your assets consist of more than fifty per cent of your liabilities?

A. I wouldn't know. [373]

Q. Now, directing your attention to the contract dated February 24, 1939, which covers a series of \$5,000 notes, totaling \$100,000, do you recall the circumstances under which you signed that contract; that is, do you remember [376] where it was?

A. Yes sir.

Q. Where did you sign it?

A. At the Provident Loan Association, 706 South Hill Street.

(Testimony of Dave Zemansky.)

Q. When was that?

A. That, as I understand it, the date would be around——

Mr. Wolver: Just a moment.

The Referee: Give us your best recollection.

A. It was the night Mr. Dienstag was in town. He had to go back to San Francisco and they wanted me up at the Provident that night. There were some things I remember. Mr. Kleinman was there the same night.

Q. What happened at the Provident Loan Association, if anything, the night you signed the contract?

A. Well, there was Mr. Kleinman and Mr. Dienstag in the front room and myself, then in the next room I think were William Simon and Mike Lyman and a representative from Isaak Pacht's office, and they also had the pledges on a desk in that same room; they were trying to work out the Simons' deal in regard to the pledges.

Q. Was it on the night that the Simons people were up at the Provident Loan Association and the security was being set aside for them, that you signed the February 24th contract?

A. Yes sir. [377]

Q. When did Abe Zemansky sign that contract, if you know?

A. That same night.

Q. Was the signature of Mr. Kleinman on the contract before you and your brother signed it?



(Testimony of Dave Zemansky.)

A. Now, that I don't remember.

Q. Are you able to tell us one way or the other as to whether his signature was on there?

A. I couldn't say. My brother Abe pointed out in the contract where it says in case anything should happen to Abe Zemansky, his insurance money should go to Mr. Kleinman, and he asked me about it. I said I guess there is not much to be done about it.

Q. Was Mr. Kleinman demanding that something be done about it?

A. He said he would have to be protected for his money. [378]

Q. Were you present at the time Mr. Kleinman volunteered to take a reduction in salary?

A. No, I wasn't there, but I might explain I used to send the checks to Mr. Kleinman at the Provident. I used to [379] send a check to the Provident for \$75, and Mr. Kleinman would not take the checks; so that might account for some of those I.O.U.'s; if you notice, there were several I.O.U.'s, one for \$75, \$50. I think later on I used to make out the checks for \$50. I happen to know more about the checks, because I sent them to the Provident, but he would not take the \$75 checks.

Q. Do you know why it was that Mr. Kleinman would not take the \$75 checks?

Mr. Dienstag: That calls for a conclusion and opinion of this witness.

The Referee: Sustained.

(Testimony of Dave Zemansky.)

Mr. Chotiner: Q. Did Mr. Kleinman give any reason why he would not take the \$75?

A. He told me there wasn't enough business up there. [380]

Cross Examination

By Mr. Dienstag: [381]

Q. All of the principal books of your business were kept at 558 South Main Street?

A. That is right.

Q. Mr. Zemansky, all of this time that you were signing the checks, did you know how much money you owed, that is, that the business owed?

A. No sir.

Q. You had no idea? A. No sir.

Q. Did you know how much money you had out on pledges? A. No sir.

Q. So you don't know how many pledges you had in the vault drawing interest?

A. No sir.

Q. Except from the fact that you took in certain sums every day? [382]

A. We didn't give it much thought. If we got any new money or not, we were always in position to pay. That's the way we went along.

Q. So all of this time that you were writing these checks, you didn't know how much you had owed, and you also didn't know how many pledges you had in the vault that people were paying you interest on? A. That is right.

(Testimony of Dave Zemansky.)

Q. Your rate of interest during most of that period, Mr. Zemansky, that is, the rate that you charged on these loans, was three per cent, was it not?      A. Yes sir, and it was two.

Q. When referring to those figures, we are speaking of the rate of interest per month, is that correct?      A. Yes sir.

Q. You say it was two per cent?

A. Yes sir.

Q. About how long back, Mr. Zemansky?

A. I think previous to 1934, and then the rate was changed to three.

Q. Then you charged three per cent?

A. Yes.

Q. So from 1934 on, you increased the rate of interest which you were charging to make loans and your income increased correspondingly, isn't that correct?      A. Yes sir. [383]

Q. So that theoretically, as I see it, Mr. Zemansky, as people paid the amounts due, you were getting thirty-six per cent a year on your money that was outstanding?      A. Yes sir.

Q. In other words, on all pledges that came in after 1934 you charged three per cent?

A. Yes sir.

Q. So that on all money that you had out, represented by loans on pledges that were in your vault, you would be getting thirty-six per cent per year?      A. Yes sir.

(Testimony of Dave Zemansky.)

Q. That is the same period of time in which you have stated you had been paying out checks for interest at the rate of twelve per cent?

A. When you say thirty-six per cent, it was thirty-six per cent on loans up to \$300, then the rate was two per cent over \$300.

Q. On all of the money that was out represented by pledges in your vault, you were getting thirty-six per cent per year on loans up to \$300 and two per cent over \$300?

A. Yes sir.

Q. And what was the greater portion of your money loaned out, that is, in what amount did it go out; was the greater amount of pledges under \$300 or over?

A. Over \$300.

Q. Most of them were over \$300, the loans that you [384] made?

A. Yes sir; that is, in volume of money.

Q. That is what I am getting at.

A. In loans, there would be more small loans than larger loans.

Q. You, of course, are familiar with the Pawnbroker's Act, as it affected your business?

A. Yes sir.

Q. And it is a fact, is it not, that you knew after you held pledges for a certain length of time, twelve months, in this particular interest business, you could sell those pledges?

A. Yes sir.

Q. And I believe the practice of your firm was, was it not, to hold them about thirteen months?

A. Sometimes we held them much longer than



(Testimony of Dave Zemansky.)

that. Twelve months was the law.

Q. You notified them, let us say, at the end of thirteen months?

A. Fourteen, two months over the law. The law said twelve.

Q. In other words, you gave the customers extra time? A. Yes sir.

Q. Now, Mr. Zemansky, you didn't loan the full value of the property, did you, to people?

A. No sir. [385]

Q. You attempted, at least, did you not, to loan less money than the pledge was worth, so that when a pledge was left with you, there would be an increase, there would be the difference in the amount which you loaned and the amount that it was worth? A. Yes sir.

Q. It was worth more than you loaned?

A. Yes.

Q. So that if it became necessary to sell that pledge, it would bring in more money than the amount that you loaned? A. Yes sir.

Q. In that way, if interest had not been paid, you received your interest by means of the value of the particular piece of property?

A. Yes sir.

Q. Are you what we might call a diamond expert? A. I was not an expert.

Q. It was not your duty then to make appraisals? A. No sir.

Q. Did you ever act as a loan clerk?

(Testimony of Dave Zemansky.)

A. Yes sir.

Q. So at least you had enough knowledge to see that you would not loan too much on property?

A. Yes sir.

Q. Would you say now, in your opinion as a loan clerk [386] and such degree of expert opinion that you may have, as a rule you got more money for the pledge than the amount you loaned on it?

A. We did in the last few years.

Q. In the last few years you did. Let us take this transaction with Mr. Kleinman, where he sold unredeemed pledges; would you say that more money was obtained from unredeemed pledges than the amount that was loaned on them?

A. Only when the loans were made since 1934 and 1935, and even back to 1932. It was less previous to that. We had loaned very liberally to people. Some people paid interest to us and we held the pledges and we also had cases where they paid a few months' interest, and there were cases where we loaned actually more than we received and lost some money; so we lost money on those loans that were made previous to 1929, before the depression.

Q. But those made from 1930 or 1932 on, you did make money on?

A. Yes, because in 1929, when the depression started to hit us, all pawnbrokers cut down on their loans.

Q. So when it came time to sell those pledges, they were sold at a profit?

A. Yes sir.

(Testimony of Dave Zemansky.)

Q. Did you at any time before you were shown a schedule, after a stock was taken of your property on hand by the Trustee, then the Receiver, did you at any time before that [387] time know how much merchandise you had on hand which was not redeemable merchandise, just jewelry?

A. No sir.

Q. So that until the figures were shown to you and an appraisal taken, you did not know how much salable merchandise you had on hand?

A. No sir.

Q. Now, at the Provident Loan Association, Mr. Zemansky, there are a series of show-cases, or were at that time rather, a series of show cases, I believe they are still there.

A. They are still there.

Q. And in those show-cases were kept jewelry of various kinds and types? A. Yes sir.

Q. Some pieces of jewelry were extremely valuable? A. Yes sir.

Q. Platinum watches with diamonds, large bracelets and so forth?

A. All kinds of jewelry.

Q. Those were the property of Zemansky Brothers? A. Yes sir.

Q. And in the same fashion was jewelry at 558 South Main Street? A. Yes sir.

Q. And perhaps some of the jewelry was not all disposed [388] of, some of it was in the vault?

A. Yes sir.

(Testimony of Dave Zemansky.)

Q. Possibly a good portion of that was kept in the Main Street vault?      A. Yes sir.

Q. Was it your practice to keep that kind of jewelry at the Provident office only or principally on Main Street?

A. At the Main Street store we used to clean up the jewelry and take it up to the Provident and display it in the show-cases you mentioned.

Q. Those items of jewelry that were not displayed were kept at the Main Street branch?

A. Yes sir. There was some in the vault at both stores.

Q. You did have some in the vault at the Provident?      A. At the Provident, too.

Q. Would you say there was more in the vault at Main Street than there was at the Provident?

A. No. I will tell you what accounts for that. We used to take certain things from the Provident to the Main Street store; we had a register and marked them in that way. That's the way they got down to that particular store.

Q. Regardless of the way they got there, they were there?      A. Yes. [389]

Q. And of course, the 558 South Main Street we have been talking about, was a loan office?

A. Yes sir.

Q. At that place you loaned the money just as you did at the Provident?      A. Yes sir.

(Discussion between Court and counsel.)



(Testimony of Dave Zemansky.)

Q. (By Mr. Dienstag): Mr. Zemansky, was Mr. Kleinman ever at the 558 South Main Street store, if you know?

A. Oh, yes sir, he came in at different times.

Q. Had he ever been in the vault of the 558 Main Street store?      A. Yes sir.

Q. Do you know of your own knowledge, Mr. Zemansky, that Mr. Kleinman had given money to Zemansky Brothers on I.O.U.'s from time to time?

A. Yes sir.

Q. Mr. Zemansky, did you expect to pay interest on those I.O.U.'s?

A. Yes; I offered to pay interest to him and he wouldn't take it.

Q. On how many occasions would you offer it to him?

A. At different times; in fact, some of those notes I think originally started with I.O.U.'s, if I remember right. Those I.O.U.'s kept bobbing up and I wanted to pay him some interest, and Mr. Kleinman would say "Never mind [390] about the interest, make out a new note for the whole amount," which I did, and then we started figuring interest on the new note. Previous to that, we never did, although I offered to pay him interest and he said he didn't want any interest on the I.O.U.'s; make out a new note. A lot of the I.O.U.'s I paid back altogether.

Q. You paid up a group of I.O.U.'s?

A. Yes sir.

(Testimony of Dave Zemansky.)

Q. In cash? A. Yes sir.

Q. At the time you paid the cash, did you pay any interest?

A. I offered to pay it. He said "Don't insult me," or some words to that effect. He didn't take it anyway.

Q. Those would be frequent occasions?

A. Yes sir. [391]

Redirect Examination

By Mr. Chotiner:

Q. Mr. Zemansky, directing your attention to the time of February 24, 1939, the contract covering the \$100,000 worth of notes. From that time on, did you ever pay any principal to Mr. Kleinman on any part of that \$100,000 obligation?

A. No sir.

Q. Now, you testified on cross examination that you were making payments as they arose; were you making them in 1938?

Mr. Miller: That is objected to as indefinite.

Q. (By Mr. Chotiner): Were you making all of your interest payments in the entire year 1938?

A. No sir, come to think about it.

Q. What was the reason you were not making all of your [393] interest payments?

A. I'll tell you; there was my sister and my brother-in-law. I used to make out the checks to my sister, Mrs. Harris, and I mailed out the other checks to the other people when we had the money to spare.

(Testimony of Dave Zemansky.)

Q. Then, did you have sufficient money during the entire year of 1938 with which to make all of your interest payments?

A. Yes sir. I would ask my sister to hold the check and I would phone my sister when I had the money to spare. She never said anything about it and I just let it go at that.

Q. During the last few months of 1938, had there been any checks issued on account of the obligations of Zemansky Brothers, which were returned by the bank because of insufficient funds?

A. 1938? I don't remember.

Q. Were there any in the first part of 1939?

A. There were some checks in 1939 I gave to people and told them to hold them for a day or two before putting them in. That might have been the latter part of 1938.

The Referee: When did you first do that other than with your relatives; when did you first ask anyone other than your close relatives to hold the checks?

A. I think it was the latter part of 1938. I was thinking it was 1939, but I think it was the latter part of 1938 that I made checks to people with the understanding [394] that they were going to hold them and I would let them know when to put the checks in.

The Referee: Proceed.

Mr. Chotiner: That is all.

The Referee: Anything further?

Mr. Dienstag: Yes.

(Testimony of Dave Zemansky.)

Recross Examination

By Mr. Dienstag:

Q. During this period you did send Mr. Kleinman his checks? A. Yes sir.

Q. You didn't ask him to hold his checks?

A. Yes, I asked him to hold the check a day or two.

The Referee: When was that?

A. That was in 1939.

Q. When in 1939?

A. That would be around I think in March. In fact, it was after the new contract.

Q. (By Mr. Dienstag): Mr. Zemansky, directing your attention back to 1932 and 1933 and thereabouts, did you ever have checks come back that you sent out? A. No sir.

Q. Never any shortage of cash at any time?

A. No sir.

Q. Were you borrowing money from people at that time, [395] new money? A. Yes sir.

Q. You were always borrowing money in your business?

A. Always borrowing money. That's why I guess we had no checks come back in this business because we were able to meet them all the time.

Q. In other words, at that time you were borrowing money from a good many people, and you could always get about as much money as you wanted and you were always paying interest?

A. Yes sir.

Mr. Dienstag: That is all. [396]



## ABRAHAM ZEMANSKY,

called as a witness on behalf of the Trustee, having been first duly sworn, testified as follows:

The Referee: Your name is Abe Zemansky?

The Witness: Yes sir.

The Referee: Proceed.

## Direct Examination

By Mr. Chotiner: [397]

Q. Prior to the time that security was given to Mr. Kleinman, who had access to the vault and the vault door where the pledges were kept?

A. One of our diamond experts by the name of Perry Cussick.

Q. Did you have access to the vault and the vault door? A. Yes sir.

Q. And did you have the combination to the vault? A. Yes sir.

Q. Did any of the other employees have the combination to the vault?

A. Only Perry and Sego, and Leo Kravitz.

Q. After the security had been given to Mr. Kleinman, was the combination on the vault changed? A. No sir.

Q. And did the same people still have access to the vault and the vault door? A. Yes sir.

Q. After the security had been set aside for Mr. [399] Kleinman and a customer would come in and wish to make redemption, how would that be handled?

(Testimony of Abraham Zemansky.)

A. We would go to the safe just as we did before and get the loan out.

Q. Was there any difference in procedure in any way after Mr. Kleinman obtained the security than there was before?      A. No sir.

Q. What did you do with the money that you received from the customer?

A. Put it in the cash drawer.

Q. And would that money be used again?

A. Yes sir.

Q. Did Mr. Kleinman ever make redemption of pledges that had been set aside for him?

A. Yes sir.

Q. Did he follow the same procedure that you have just described?      A. Yes sir.

Q. Now, Mr. Zemansky, were any notices ever sent to any customers of the Provident telling them that there had been an assignment of security given to Mr. Kleinman?      A. No sir.

Q. And were collections handled in the same way that they were before the security had been given to Mr. Kleinman?

A. The same way. [400]

Q. When was it that you signed the contract for the \$100,000 worth of notes?

A. I believe it was on the 27th of February.

Q. Did anything occur on that day that fixes that as being the time in your mind?

A. Why, we were straightening out the attachment on the place. We were straightening out with Simon for the loan, for the money we owed him.

(Testimony of Abraham Zemansky.)

Q. And was that in the daytime or night time that you signed the contract?

A. In the night time.

Q. Did you sign the contract the same time your brother Dave did?           A. Yes sir.

Q. Do you know whether the signature of Mr. Kleinman was on the contract at the time you signed it?

A. I don't know; I don't think so.

Q. Was Mr. Kleinman there that night?

A. Yes sir.

Q. Do you know whether he signed the contract that night?

A. Well, that I couldn't swear to. I'll tell you what happened. I started to read the contract over and there was something about the insurance and I wanted to leave it go to the next day and get it to my attorney to read over. He said everything had to be completed that night. [401]

Q. Who told you that?

A. Mr. Kleinman.

Mr. Chotiner: Q. Mr. Zemansky, whenever you made a redemption of a pledge that had been set aside for Mr. Kleinman, how long would it be in the custom of the business before other pledges were used to replace the ones that had been taken away?

A. Sometimes two or three days, sometimes a week. We always ran it to about three or four thousand dollars, fifteen hundred dollars, all over a thousand dollars.

(Testimony of Abraham Zemansky.)

Q. Were there any times when you and Mr. Kleinman talked about not having sufficient money on hand to make loans?

A. Not that I know of.

Q. What was that?

A. I don't know anything about it.

Q. Did Mr. Kleinman ever say anything to you about there not being enough money in the cash drawer to make loans?

A. I don't know about that, any time at all.

Q. Mr. Zemansky, after the contract covering the \$100,000 in notes was signed, did you ever go to the Union Bank with Mr. Kleinman?

A. Yes sir. [402]

Q. What was the occasion of your going to the Union Bank with Mr. Kleinman?

A. Mr. Kleinman would make out a check for the amount of the redemption, say the redemption was \$4,000, and a check was made in his daughter's name.

Q. Do you know what his daughter's name is?

A. Dienstag.

Q. Then after the check would be made out, what would you do?

A. I would go with Mr. Kleinman to the Union Bank. The first time he told the teller any time I brought any check in to cash it. Whatever the amount was the teller would give me the money. Mr. Kleinman would be in the back and take the money, just a routine like that.



(Testimony of Abraham Zemansky.)

Q. After you got the money from the teller, what did you do with it?

A. Mr. Kleinman would be there and I would pass it to Mr. Kleinman.

Q. Did Mr. Kleinman go with you on every occasion that you went to the Union Bank to cash a check?

A. I think most every occasion, maybe once or twice he didn't go.

Q. How close did Mr. Kleinman stand to you at the time you would go down to the Bank and get the money?

A. After the first time it was always at the Union Bank. [403]

Q. And then you would go over to him, is that correct?

A. And hand him the money.

Q. Whose suggestion was it, if you know, to go down to the Union Bank and cash the check and then give the money to Mr. Kleinman?

A. It was his son-in-law's suggestion that that's the way it would be carried out.

Q. Who told you that?

A. Mr. Kleinman.

Q. What did Mr. Kleinman tell you about that?

A. Just said that's the way it had to be carried out. In fact, I don't remember any other words mentioned about it.

Q. Now, whenever you would go down with Mr. Kleinman with those checks to the Union Bank,

(Testimony of Abraham Zemansky.)

did that ever have anything to do, if you know, with the making out of new notes and new contracts?

A. We took the check to the Bank, we got out a new contract and a new note and we put pledges in the drawer for the amount of the loans taken out.

Q. And was that done on all the occasions that these new contracts and new notes were executed?

A. On all of these occasions.

Q. Now, after you gave the money to Mr. Kleinman that you received as a result of cashing the check, do you know what Mr. Kleinman did with the money?

A. Mr. Kleinman re-deposited the money in the same [404] account, because the teller at the Bank the third time I was there wanted to know what was the system of taking the money out one day and putting it back the next day.

Mr. Wolver: I move that the latter part go out, about what the teller said.

The Referee: In the presence of Mr. Kleinman?

Mr. Chotiner: Q. Was it in the presence of Mr. Kleinman? A. He said it to me.

The Referee: Did he say it in the presence of Mr. Kleinman?

A. No sir.

The Referee: It may go out.

(Testimony of Abraham Zemansky.)

Mr. Chotiner: Q. Without telling me what the teller told you or what the teller asked you, about cashing the checks, just answer yes or no, did you tell Mr. Kleinman what the teller told you?

A. Yes sir.

Q. What did you tell Mr. Kleinman?

A. I told Mr. Kleinman that the teller wanted to know what the system was of taking the money out one day and putting it back the next day.

Q. What did Mr. Kleinman say to you, if anything, about that?

A. A few days after that he said that from now on we will make out the checks, he told me this is the way to do [405] it, from now on, instead of \$4,000, make out a check for \$1600, and then the next time make one out for the difference.

Q. Did Mr. Kleinman tell you anything at all as to what to tell the teller?

A. He said to tell the teller that it was his own money in the Bank and it was no business of the teller to inquire from me what was the system of putting the money back again.

Q. Now, Mr. Zemansky, will you explain once more what the difference was, as that is not quite clear in my mind, in the system that was followed in making and cashing the checks after you told Mr. Kleinman what the teller had told you?

A. We would make out one check for a smaller amount, and then when it equaled \$5,000, to put it on account of the note; he would make out another check for the balance of it.

(Testimony of Abraham Zemansky.)

Mr. Horn: May I have that last answer read?

(Answer read).

Mr. Chotiner: Q. What would be the basis for determining as to the amount you would make the check out for in the first place?

A. The amount of loans that was redeemed and new loans placed in the box. [406]

Cross Examination

By Mr. Dienstag: [407]

Q. Mr. Zemansky, you have testified here with regard to some provisions for insurance in this contract. Is it your impression at this time that this contract provided for your insurance as security?

A. No, in case anything happens to me, the insurance goes as security. That is what I understood that night.

Q. Who did you ask about it?

A. I didn't ask anyone. I asked Mr. Kleinman to leave it go to the next day and he said "Everything has to be completed that night." [409]

Q. Did you state at that time that you wanted to know whether your home or your insurance would be liable under this contract?

A. Just the insurance we were talking about, I think.

Q. At that time you asked if anything happened to you, whether the insurance from your estate, whatever it was, would become subject to this liability of this contract?



(Testimony of Abraham Zemansky.)

A. That's the idea. [410]

Mr. Dienstag: Q. You had something in mind, Mr. Zemansky, when you changed the note and contract which appears opposite the contract starting with May 9th to cash on July 5th?

A. I have no idea what it is. It says "Contract cash, \$2400," which is another one I had no dealings with.

Q. You wrote that, didn't you?

A. I wrote that down, but on Mr. Kleinman's orders to write it down.

Q. Who put "cash" there?

A. That was Mr. Kleinman's order. [414]

# KLEINMAN'S EXHIBIT No. 5

PLEDGES REDEEMED AND PAID TO "S. KLEINMAN"  
SAM KLEINMAN, LOS ANGELES, CAL.

Paul W. Sampsell, Trustee

371

(Testimony of Abraham Zemansky.)

Date	Items	Folio	Debits	Date	Items	Folio	Credits
Mar. 2	Returned 5 Notes 5000 E....		25,000	1939	Contract A		99,379.00
" 2	Credit on 5000 Note.....		920	Feb. 24	" " Cash		621.00
" 22	" " " ".....		2,510	Mar. 2	" B		25,920.00
" 28	" " " ".....		1,570	" 22	" C		2,510.00
" 28	Credit on 5000 Note.....		430	" 28	" D		2,000.00
" 30	" " " ".....		2,200	" 31	" E		2,200.00
Apr. 4	" " " ".....		2,000	Apr. 5	" E		2,000.00
" 4	" " " ".....		370	" 3	" F		2,500.00
" 4	" " 5000 " ".....		2,130	" 8	" G		2,000.00
" 8	" " " ".....		2,000	" 11	" H		2,200.00
" 11	" " " ".....		870	" 13	" I		2,100.00
" 11	" " 5000 " ".....		1,330	" 15	" J		2,200.00
" 13	" " " ".....		2,100	" 18	" K		2,500.00
" 15	" " " ".....		1,570	" 21	"		2,000.00
" 15	" " 5000 " ".....		630	" 24	"		1,500.00
" 18	" " " ".....		2,500	" 28	"		2,500.00
" 21	" " " ".....		1,870	May 2	"		1,200.00

(Testimony of Abraham Zemansky.)

Kleinman's Exhibit No. 5—(Continued)

Pledges Redeemed and Paid to "S. Kleinman"—(Continued)

Date	Items	Folio	Debits	Date	Items	Folio	Credits
1939							
Apr. 21	" " 5000	"	130				
" 24	" " "	"	1,500				
Amt. Frd.							
Apr. 28	Credit on 5000 Note		2,500.00	May 9	Contract		3,700.00
May 9	" " "		870	" 13	"		2,000.00
" 9	Credit on 5000 Note		2,830	" 21	"		3,400.00
" 13	" " "		1,000	June 2	"		3,750.00
" 25	" " "		1,170	June 7	"		3,400.00
" 25	Credit on 5000 Note		2,230.00	" 23	"		3,900.00
June 7	" " "		2,770	" 28	"		4,600.00
June 7	Credit on 5000 Note		630	July 5	"	Cash	2,400.00
" 23	" " "		3,900.00				
" 28	" " "		470.00				
" 28	Credit on 5000 Note		4,130.00	A.Z.			

[Endorsed]: Filed Aug. 23, 1940.

(Testimony of Abraham Zemansky.)

Mr. Dienstag: Q. Mr. Zemansky, I call your attention to the left-hand column of the first page of Kleinman's Exhibit 5, and ask you what the sums are which are listed there?

A. These were checks given and they equal \$5,000 for each note.

Q. In other words, these are the credits on each note, Mr. Zemansky, due Zemansky Brothers on notes for which they [415] had signed?

A. Yes sir.

Q. So you would credit yourself with the amount of pledges, is that correct, on the contract made or the payment made, and you would endorse the note a certain amount paid?

A. Mr. Kleinman would put down on the notes "Paid on account," until each note equaled the \$5,000, and then turned the notes over to Dave.

Q. Turned the notes over to your brother Dave?

A. Yes.

Q. In return, you would sign another note?

A. A new note.

Q. For the amount of the new contract?

A. The new contract, that's correct.

Q. If you will follow these dates with me, Mr. Zemansky, March 2nd, referring again to Kleinman's Exhibit number 5, you credited the sum of \$25,920? A. Yes sir.

Q. Now, that was the amount of the Simon transaction, was it not?

A. I believe it was.



(Testimony of Abraham Zemansky.)

Q. In other words, when you signed the Simon contract, that is, the Kleinman contract which had to do with the Simon deal, the Simon transaction, you signed new notes in the sum of \$25,920, and that was credited against the [416] \$100,000 contract? A. That is right.

Q. And following that, when you signed the contract of March 22nd you credited your account with \$2,510, and that was credited on one of the \$5,000 notes and a new note in the sum of \$2,510 was given, the contract was signed and both were delivered to Mr. Kleinman, together with a list of the pledges, thereto attached?

A. That is right.

Q. And you followed the same procedure thereafter with every transaction, isn't that so?

A. Yes sir.

Q. That was the procedure by which you credited the new contracts on the old ones; by the old contracts, I mean the first contracts, Mr. Zemansky?

A. Mr. Kleinman credited the \$5,000, then we made out new notes for the new loans that went in the box.

Q. Now, on May 13th, (?), as indicated by Exhibit 5, Kleinman's Exhibit 5, in the right-hand column after the word "contract," there is the sum of \$3,750 (?). A. Yes.

Q. You will note, Mr. Zemansky, by looking at the left-hand column an amount which you credited yourself with, and that amount is not included.

(Testimony of Abraham Zemansky.)

Mr. Laugharn: Is that a question?

The Referee: The record speaks for itself. You don't [417] need to ask the witness to interpret the record. It has an exhibit number and it speaks for itself.

Mr. Dienstag: Q. What credit then did you give yourself on that date, Mr. Zemansky, for that \$3,750?

A. This contract, I don't know what credit we got for that. I don't know myself what credit we got.

Q. On the \$3,750 contract, which you signed, and the note which you signed, you did sign a contract and notes, I take it?

A. I guess we did. I must have signed it, it is there.

Q. You don't know what the consideration was?

A. I don't know. I think it can be traced to the book we kept on each pledge, a little blotter.

Mr. Dienstag: If I may have the Claimant's Exhibit number 3, your Honor?

Q. Mr. Zemansky, I call your attention to Claimant's Exhibit number 3, one of the slips comprising that exhibit. I direct your attention to the slip of that exhibit, dated February 21, 1939, to the figures above that date; do you recognize that handwriting? A. That is my handwriting.

Q. That is your handwriting? A. Yes.

Q. Do you know whether you wrote that on February 21st?

(Testimony of Abraham Zemansky.)

A. I don't know whether I wrote it on February 21st, but the top handwriting is all mine. But this is not mine, [418] these dates signed here.

Q. At about that time, that is, about February 20th, 21st or 22nd, were you preparing these slips for Mr. Kleinman, any of them?

A. Well, once in a while I would prepare the slips. Mr. Leo Kravitz prepared most of the slips.

Q. Do you know the purpose of these slips?

A. These were I think the loans supposed to be redeemed on that date.

Q. Which loans, Mr. Zemansky?

A. The loans taken out of the Kleinman pledges, set aside for Mr. Kleinman.

Q. That is, pledges taken out of the Kleinman box on February 21st?

A. The loans that were redeemed.

Q. Do you know why these tickets were being given to Mr. Kleinman, why they were being made out?

A. To show the pledges which were redeemed.

Q. When you made these notations, at the time you made them, you knew they had something to do with the contract which you had entered into with Mr. Kleinman?

Mr. Chotiner: That assumes a state of facts not in evidence.

Mr. Dienstag: If you know?

The Referee: Overruled.

(Testimony of Abraham Zemansky.)

A. Whenever we got a certain amount of pledges that [419] were redeemed, we replaced others for them.

Mr. Dienstag: Q. Before you entered into the contract with Mr. Kleinman, Mr. Zemansky, did you furnish Mr. Kleinman with any slips like these each day?

A. Before we entered into the contract?

Q. Yes.

A. Not before February 27. [420]

Mr. Dienstag: Q. Do you know what this book is, Mr. Zemansky?

A. A register we kept for the pledges we had in Mr. Kleinman's drawer.

Q. This contained all of the numbers of the pledges which went to secure Mr. Kleinman's contract, is that correct; these are the numbers that appeared in Mr. Kleinman's contract?

A. Yes sir.

The Referee: Do you offer that?

Mr. Dienstag: Yes, your Honor.

The Referee: This is Kleinman's Exhibit number 6.

Mr. Dienstag: Q. Who stamped these, did you?

A. No sir.

Q. Who stamped them?

A. One of the girls in the office. [421]

Q. Now, Mr. Zemansky, when a pledge was redeemed, it was stamped redeemed on the date it was redeemed, is that correct? A. Yes sir.



(Testimony of Abraham Zemansky.)

Q. I direct your attention to page 15.

Mr. Laugharn: If the Court please, we are not sure about that book, who kept it and where it came from.

The Referee: It has been received in evidence. Proceed.

Mr. Dienstag: Q. I direct your attention, Mr. Zemansky, to page 15 of this exhibit, which is Claimant's Exhibit number 6, pledge number 29925, marked redeemed February 24, 1939?

A. Yes sir.

Q. I also direct your attention to the slip dated February 24, 1939, in Claimant's Exhibit number 3, which has the number 29925 on it, \$150, corresponding to the number in the book.

A. Yes sir.

Q. Would you say that that pledge was redeemed on February 24th?

A. By looking in the day book and looking on that date, I would say the pledge was redeemed on that date.

Q. Wasn't this book kept for that purpose?

A. No, this was a register kept for Mr. Kleinman.

Q. Did you keep more than one book like this one?

A. We kept I think another book. [422]

Q. With the same numbers?

A. The same numbers.

Q. And it was marked exactly the same way?

(Testimony of Abraham Zemansky.)

A. Just the adding machine tape with the numbers alongside of them.

Q. The same numbers?           A. Yes.

Q. In other words, the other was the adding machine tape with these figures opposite giving the same numbers of the pledges?

A. I guess so; it was the same number; it would be the same number.

Q. One was a copy of the other so far as the numbers and the amounts were concerned, is that right?           A. That is right.

Q. When you got a pledge in, Mr. Zemansky, did you ever mark these?           A. This book?

Q. Yes.           A. This book here, no.

Q. Did you ever write in this book yourself?

A. I don't think so; I don't see any of my writing in there.

Q. Suppose you just glance through it quickly.

A. I don't think there is any of my writing in there.

Q. Did you keep the other book with the adding machine [423] tape?

The Referee: I am sorry, Mr. Dienstag, the Court will not permit you to interrogate this witness about the other book unless the book is here.

Mr. Dienstag: I am going to ask that the attorney for the Trustee make it available, because I gave it to the Trustee for their convenience.

The Referee: Very well.

Mr. Weller: What book is it?

(Testimony of Abraham Zemansky.)

Mr. Dienstag: I gave it to the Trustee to help him in the tracing of these amounts and pledge numbers.

Mr. Laugharn: Maybe we can find that one for you, where this one came from.

The Referee: This book is in evidence. Proceed.

Mr. Dienstag: I won't pursue that any further. Later on, when this witness has left we can look through the book for those numbers of February 21st. The witness had some doubt about the date of this slip.

The Referee: All right, proceed.

Mr. Dienstag: I offer this as Claimant's exhibit next in order.

Mr. Chotiner: Objected to on the ground that there has been no showing as to materiality.

The Referee: Overruled. Kleinman's Exhibit 7.

---

## KLEINMAN'S EXHIBIT No. 7

### INVENTORY

March 20/39

C1      K

48503.....	200.
48505.....	100.
48513.....	75.
48518.....	100.
48530.....	60.
48537.....	300.
48538.....	90.

(Testimony of Abraham Zemansky.)

48540.....	300.
48542.....	75.
48547.....	100.
48563.....	50.
48567.....	50.
48569.....	100.
48597.....	60.
48603.....	150.
48608.....	150.
48626.....	100.
48637.....	65.
48638.....	60.
48645.....	225.
48651.....	100.
	<hr/>
	2510.

[Endorsed]: Filed Aug. 23, 1940.

---

Mr. Chotiner: May we have some kind of term applied to it so we will know what it is? [424]

The Referee: This is an inventory or, rather, a list of pledges dated March 20, 1939, totaling \$2,510.

Mr. Dienstag: Prepared by the witness, your Honor.

The Referee: That may be in the record, but I am just telling you what this sheet is.

Mr. Dienstag: Q. Calling your attention to the last exhibit, which is one I believe that you prepared, purporting to be certain pledges which were



(Testimony of Abraham Zemansky.)

security for a contract, did you prepare other lists like that for your contract?      A. Yes sir.

Q. Calling your attention to Exhibit number 5, I call your attention to a contract in a column on the first page of the exhibits, and marked March 22, "C," \$2,510. March 22nd I take it is the date you entered into that contract, is that correct?

A. Yes sir.

Q. And "C" is the identification of that particular contract on that date?      A. Yes sir.

Q. And the \$2,510 is the amount of the contract?

A. The amount of the contract.

Q. I call your attention to Exhibit number 7, labeled "C," where the security is listed at \$2,510. Now, this security, Mr. Zemansky, is the security for the contract of March 22nd in the sum of \$2,510, is it not? [425]      A. That is right.

Q. And those pledges were selected two days before you entered into that contract, is that correct?      A. Yes.

Mr. Chotiner: Objected to as calling for the conclusion of the witness.

The Referee: Overruled. It may stand.

The Witness: I couldn't swear to that.

The Referee: There is no question pending.

Mr. Chotiner: I don't think there was an answer.

The Referee: He didn't answer it?

Mr. Chotiner: No.

(Testimony of Abraham Zemansky.)

The Referee: Read it.

(Question read).

A. Yes sir.

Mr. Dienstag: Calling your attention again to Exhibit number 7, after you prepared these lists, Mr. Zemansky, what would you do with those?

A. We would put it in the blotter and give one set to Mr. Kleinman; the other set was put on the blotter and kept as a record.

Q. So that you gave one of those to Mr. Kleinman when you prepared it? A. Yes sir. [426]

Q. I direct your attention, Mr. Zemansky, from the files of the court, to-wit, the proof of claim of Sam Kleinman, therein containing that agreement dated the 24th day of February, and I direct your attention especially to the last page of that agreement, upon which appears the heading "Receipt." This is dated the 24th day of February, 1939. Now, Mr. Zemansky, do you have any recollection at this time of signing that receipt on the 24th day of February, 1939?

A. I didn't sign that receipt on the 24th day of February, 1939.

Q. When did you sign it?

A. The 27th of February.

Q. Are you certain of that?

A. I signed it on the night that Lyman and the Simon boys were in the Provident and you were there also. It was the 27th; it wasn't the 24th.

Q. You are certain it was not the 24th?

(Testimony of Abraham Zemansky.)

A. Absolutely.

Q. And who was present when you—will you read this document first?

The Referee: Mr. Dienstag, you are going to have to move a bit faster. You are not getting anywhere with your case. You are going over and over again the same thing. The witness has stated positively that he signed it on the 27th. Now, proceed. If you have any evidence to the [427] contrary you will have an opportunity to offer it.

Mr. Dienstag: Q. Mr. Zemansky, you have testified on direct examination with regard to the exchange of checks, or, rather, the deposit of a check by you which was made by Mr. Kleinman and deposited by you, that is, cashed by you at the Bank and returned to Mr. Kleinman. Who first suggested that as the transaction?

A. I don't know. The only thing, Mr. Kleinman said it was his son-in-law's instructions and that is how it had to be carried out.

Q. Did your bookkeeper keep a record of the amount of jewelry sold by Mr. Kleinman?

A. It was kept at the 558 store, the amount of jewelry sold by Mr. Kleinman.

Q. And if you know, was a record of such amount of sales given to Mr. Kleinman by your bookkeeper? [428]

A. Mr. Kleinman kept the sales himself, a copy.

Mr. Dienstag: Q. Where did he keep this, if you know?

(Testimony of Abraham Zemansky.)

A. He had a regular memorandum book.

Q. Those were the sales slips themselves, weren't they?      A. Yes sir.

Q. You would total the amount of sales for a period of three or four months?

A. He would take them from his memorandum book, he could tell from that.

Q. Tell me this, if you know, of your own knowledge, did the bookkeeper at the 558 store, where those records were kept, furnish Mr. Kleinman with a statement as to the amount of jewelry which he sold?      A. That I don't know.

Q. Mr. Zemansky, wasn't it at your suggestion that these check transactions take place?

A. No sir.

Q. Didn't you suggest to Mr. Kleinman that that would be a good way to keep a record of the amount?      A. No sir.

Q. Now, Mr. Zemansky, when you picked out the pledges that were to secure these contracts as you entered into them, where were they taken from?

A. I didn't pick the pledges. Mr. Kravitz picked the [429] pledges.

Q. You didn't have anything to do with them?

A. I didn't have anything to do with the picking of the pledges.

Q. Where were the tickets taken from; you took the pawn-tickets themselves, didn't you, out of the books?



(Testimony of Abraham Zemansky.)

A. We made a record of the pledges that Mr. Kravitz picked, and then I took the stubs out of the regular books and put them in the book we kept for Mr. Kleinman.

Q. Now, with regard to the physical taking of these pledge tickets out of the book where they were, and before they were put into Mr. Kleinman's book, where were these pledge tickets taken from?

A. From the office where we kept all the loan tickets, the pledge tickets.

Q. With regard to the point of time, were they taken from the new pledges that were coming in?

A. Not all the time; they were taken from old pledges sometimes.

Q. Sometimes you took them solely from old pledges, did you?      A. Yes sir.

Q. And on other occasions you would take them from the pledges which were then coming in from day to day, the new pledges?      A. Yes. [430]

Q. So that some contracts are composed of solely new pledges and some of the old?

A. The late contracts are the new pledges. Most of the contracts were for the old pledges. [431]

#### Redirect Examination

By Mr. Chotiner:

Q. Directing your attention to Kleinman's Exhibit 6, being a ledger book, does that book generally cover all pledges other than the Kleinman pledges?

(Testimony of Abraham Zemansky.)

A. This contains, I believe, only Kleinman pledges. [432]

By Mr. Laugharn:

Q. What were your assets at the time of your bankruptcy, at the time of these bankruptcy proceedings, Mr. Zemansky?

A. What do you mean, personally?

Q. Yes, what property did you have?

A. There was \$68,000 worth of life insurance, some [434] property in Sacramento and out of San Francisco, in San Mateo County, land in San Mateo County.

Mr. Dienstag: Pardon me; I didn't get the answer.

(Answer read).

Mr. Dienstag: Before there is another question, we haven't examined these records at all. They have been introduced by reference, the personal schedules, simply for the purpose of the record. We will object to their introduction into evidence until we can examine them and have some look at what these assets are.

The Referee: Well, if there is objection, you will have to prove the record.

Mr. Laugharn: My questions are not leading to that now.

The Referee: Let us send for them right now.

Mr. Laugharn: I think we can clear it up with a question.

(Testimony of Abraham Zemansky.)

Q. This \$68,000 worth of insurance, that was the face amount of the policy, was it not?

A. Yes sir.

Q. You claimed certain policies were exempt and the Trustee said they were not?

A. Yes sir.

Q. Then you came to a settlement, as evidenced by an order in the file? A. Yes sir. [435]

Q. And you received an exemption on the policies by releasing to the Trustee of the estate a certain amount of money? A. Yes sir.

Q. How much was that that was released to the estate?

A. I think it was around close to \$12,000.

Q. That came into the estate? A. Yes sir.

Q. You had for some time the cash surrender value of your policy, for a year or more?

A. For over ten years; I had policies thirty-five years.

Q. Now, these other properties that you have mentioned, what in your opinion is the value of your equity in those assets?

A. About \$1500.

Q. About \$1500. And so we can say \$1500 plus your insurance, cash surrender value?

A. Yes sir.

Q. Did you have any other assets?

A. There were some stocks that was sold, I think, for \$2600.

Q. Any other property? A. That is all.

(Testimony of Abraham Zemansky.)

Q. You had your furniture? A. No. [436]

Q. No furniture? A. No furniture.

Q. Do you have an automobile?

A. No automobile.

Q. Then your gross cash worth was the figure you have related? A. Yes sir.

Q. Was that approximately the same for a year prior?

A. Absolutely. In fact, I took out more insurance the year before, within the last year, about six months before our bankruptcy.

Q. What do you mean by that?

A. I took out another policy.

Q. It would be approximately the same?

A. It was the same. [437]

---

DAVID ZEMANSKY,

recalled for further

Direct Examination

Mr. Laugharn: Q. Mr. Dave Zemansky, at the date of this bankruptcy proceeding, what personal assets did you have?

A. I think I filed less than \$100.

Q. Did you have an automobile?

A. No sir.

Q. Did you have any furniture?

A. No sir.

Q. Your estimate, then, of your personal es-



(Testimony of David Zemansky.)

tate, the value of the assets that you yourself had, other than the assets of the co-partnership, was not over \$100?      A. Yes sir, less than \$100.

Q. And were those assets of approximately the same value for a year prior to the date of these proceedings; did you have any more assets or less?

A. No sir.

Q. Within a year?      A. No sir.

Q. You never had a bank account, had you?

A. I had a bank account quite a long time ago, but it was closed.

Q. But not within a year? [438]

A. No sir.

Q. Your answer was no. Were your assets approximately the same during the period of a year prior to the date of bankruptcy?

A. Personal assets.

Q. What is the answer?

A. The answer is they would be just the same as at the time of the bankruptcy. I never had any more cash at that time.

Q. That is clear enough, unless there is something you are thinking about?

A. No, I never owned an automobile, never owned any real estate.

#### Cross Examination

By Mr. Dienstag:

Q. That was the ordinary condition with you, all of your assets were in the partnership rather than personally?      A. Yes sir.

(Testimony of David Zemansky.)

Q. For years?           A. Yes sir. [439]

Mr. Chotiner: It is stipulated by and between counsel that the records of the Hotel St. Francis of San Francisco show that a Sol Zemansky registered there on February 22, 1939. So stipulated, gentlemen?

Mr. Dienstag: I see no objection.

The Referee: All right. He registered February 22, 1939. Proceed.

